

30

सर्व शिक्षा अभियान

सब पढ़ें सब बढ़ें

फाइल सं

File No. 7/12014/12/07-Cdn

खण्ड
Volume

भारत सरकार

GOVERNMENT OF INDIA

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS

अनुभाग
SECTION Cdn 2702/07/12

पत्राचार
CORRESPONDENCE

को सूचीकृत की गई
Indexed on

कटौत
Initials

रजिस्ट्रार ड/ए
Record A/B

रजिस्ट्रार न नष्ट पत्र
Record C Destroyed in

नोट किया जाए अनुसूचीया नोट बुक
नोट न किया जाए

To be noted In Sectional Note Book
Not to be noted

अनुसूची/अनुसूची के हस्ताक्षर
Initials of S.O./Supdt.

सिपिक के हस्ताक्षर
Initials of Clerk

विषय
SUBJECT

W. P. No. 27541 of 2006 -
Ashimkr Ganguly + Others Vs.
G.O. regarding death of Nitish
Subhash Chandra Bose

A

Supplementary Affidavit dated 10/11/12
Domestic Complaints sent on 18/11/12

Note - 54 Pages
Correspondence - 558 Pages

पिछले हवाले
Previous References

बाद से हवाले
Later References

Shakeel Hkhar
990 33 21066

Key
16/11/12

30

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Farooq Razak Mob. 9 830028394

Ph. 033-22484980

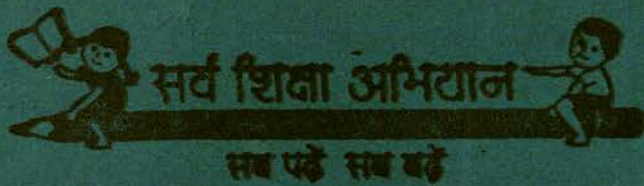
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- 2) ss.sarker@rediff.com.



30

फाइल सं०

File No. T/12014/12/07-Edn.

खण्ड

Volume

भारत सरकार
GOVERNMENT OF INDIA
 गृह मंत्रालय
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SECTION

पत्राचार

CORRESPONDENCE

को सूचीकृत की गई

on

विषय

SUBJECT

WP-No-27541 of 2006-

Ashim Kumar Ganguly and others vs.

G.O. Regarding death of Neta Ji Subhash

Chander Bose.

क/व
A/Bय में नष्ट गए
C Destroyed in

जाए अनुयायीया नोट बुक

किया जाए

oted In Sectional Note Book

be noted

/अधीक्षक के हस्ताक्षर

of S.O./Supdt.

हस्ताक्षर

of Clerk

Mob- Shaked Akhatar - 9903321066

पिछले हवाले

Previous References

बाद के हवाले

Later References

Sh. R.N. Das - 0983026868/

MHA

Cdr Section

Judl. + PP Division has forwarded a letter received from Junior CGA, M/ Law + Justice Kolkata regarding W.P. No. 27541(W) of 2006 prohibiting incurring of any amount of Public ~~amount~~ money from public Exchequer for preservation and maintenance of Renkoji Temple, Japan for keeping the ashes of Netaji Subhash Chandra Bose.

The subject pertains to MEA. In the letter of Tarun Kumar Ghosh it is not clear who are the respondents. We may write to Jr CGA, M/ Law + Justice, Kolkata as per DFA.

BK Bhattacharya

24/4/07

USC Arms

Reference above. The subject matter is of MEA. Also, copy of the petition has not been received. So, a letter may be sent to M/Law to intimate the details. DFA pl.

AS(L)

US(L)

SO (Cdr)

US (Arms)

Sugawani
25/4/07

25/4

Sugawani
25/4/07

For letter for signature please.

BK Bhattacharya

Sug
25/4/07

SO (Cdr)

2
-2-
Ref. FR

Ministry of External Affairs vide their
letter no 25/4/NGO-XVI dt 7th May, 2007
has requested for ~~for~~ the copy of Writ
Petition. We may give reminder to M/o
Law & Justice to send the copy of Writ
Petition urgently to this Ministry as per DFA.

ME
14/5/07

US (Armed)

So (cont)

Sugosai
14/5/07

Bhalu
14/5/07

M/S

✓ F/X

A writ petition No. 27541 of 2006 has been filed in the Calcutta High Court by Shri Ashim Kumar Ganguly and another praying, inter alia, for (i) not incurring further expenses from the Public Exchequer for maintenance and upkeeping of Renkoji Temple, Japan, (ii) placing the report of Justice Mukherjee Commission before Parliament for open debate or discussion, (iii) not incurring any expenses from the Public Exchequer in respect of respondent No. 5 (Netaji Research Bureau) for research work on any issue pertaining to Netaji.

x F/Y

2. The petitioners have filed a supplementary affidavit also in respect of this case. Copies of the original and supplementary affidavit have been received only in September, 2007.

3. As will be seen from the petition, several paragraphs concern the ashes of Netaji, which is the subject matter of MEA. A few paragraphs concerns Netaji Research Bureau. One paragraph concerns Public Section of this Ministry MoD. The concerned paragraphs are as follows -

MEA	:	12, 15, 17, 18, 19, Ground I, V, VI and VIII, 24(a), 24(e) and 24(g).
Public Section	:	5
MoD	:	5
Netaji Research Bureau, Kolkata	:	16, Ground IV and 24((c).

4. Comments on the paras of the original petition as well as on the supplementary affidavit (which concern this Ministry) have been prepared and are placed at F/A and F/B. It is proposed that copies of the petitions may be sent to MEA, Netaji Research Bureau, MoD and Public Section, MHA, for comments on those paras which concern them. A letter may also be sent to Shri Tarun Kumar Ghosh, Govt. Counsel, informing that parawise comments are under preparation and that time may be sought from the Hon'ble High Court of Calcutta for filing the reply. Accordingly, DFA-I and DFA-II please.

5. It is mentioned here that another writ petition No. 2003/3006 on Netaji Subhas Chandra Bose has been filed in the Calcutta High Court and in view of the sensitivity and importance, a Special Counsel (Shri R.N. Das) has been appointed through M/o Law & Justice, Branch Secretariat, Kolkata. It may also be considered whether this case should also be entrusted to Shri Das as this also concerns same sensitive subject.

5044/DS(L)/07
5/10/07

A/

1945/1145/07
5/10/07

(1) MEA has also been made a respondent but we may have to consult them.

S.K. Goswami
4/10/07
(S.K. Goswami)
Under Secretary

DS(L)

(2) A - Other Ministries are also concerned. Their comments may be solicited as per DFA-I.

(3) DFA-II to Advocate to seek extn. of time may be

(4) 'B' - above is essential. we may take up with

Branch Secy Kolkata

to. H. M. up 5/10

5/10

LS(A) S
8/10

DS(L)

TS(US)

PR. issue with encl.

Sugoswar
12/10/07

So (Ldn)

Notes on pre-page will recall.
Only MoD has sent their comments. Others have
not sent the comments so. A reminder may be
sent. DFA M.

Sugoswar
12/11/07

DS (L)

1/10
14x1

Ref. above.

Although MEA has sent the material, Public
Section of MHA → Netaji Research Bureau
of Kolkata have not sent the reply. A reminder may
be sent. May pl. see for approval.

Sugoswar
7/11/07

DS (L)

US (A)

1/10
7/11/07

Pl. issue

1/10
7/11/08

5678/DS(L)/07
12/11/07

US (A)

Pl. issue

13/11/07

So (Ldn)

58/DS(L)/08
7/11/08

Sent. N

Notes on page 3 will recall.

2. Paragraph 5 of the writ petition talks about conferment of Bharat Ratna on Netaji. As Public Section of MHA dealt with this, they were requested in October, 2007 to send material to reply to the same. They have been reminded verbally and in writing in November, 2007 and January 2008, but still nothing has been received. Same is the case with Netaji Research Bureau, Kolkata (Respondent No. 5) (there are averments in para 16, Ground IV and prayer 24(c) of the writ petition). In view of the fact that there is a prayer in the supplementary affidavit (para 11 - F/Z) that as UOI has not filed the reply so far, the case may be heard without reply, it is proposed that -

Para 5 may be replied as "No comments are offered on the averments about conferment of Bharat Ratna on Netaji as these are matters of records. With reference to statement made about bringing the ashes from Japan by Ministry of Defence, it is stated that there is no proposal before Ministry of Defence in this respect."

Para 16 and Ground IV may be replied to saying that no comments are offered as they concern Netaji Research Bureau, Kolkata.

3. Inputs have been received from MEA and MoD. The parwise comments have been prepared (except para 5) and is placed at F/Y for perusal/approval please.

4. Submitted for orders please.

Sugoswan
9/1/08
(S.K. Goswami)
Under Secretary

DS(L)

On para 5 → Public Section through DS has been asked to send comments, which will be sent by Friday, 11th Jan, as promised, may be incorporated as received.

On para 16 → Netaji Research Bureau itself is a respondent. We need not await or pursue with them.

Some corrections have been made in DPA file, fair draft, after incorporating reply of Public Sec. may be submitted.

9/1/2008

~~US(L)~~

10/1/08

138/DS(L)/08
9/1/08

✓ P. 54/c
x P. 114/c
o P. 120A/c
o P. 123/c
x P. 66/c
x P. 70/c
B P. 75/c

✓ P. 121/c
x P. 116/c

Ref. notes on Preface.

The comments have been received from the Public Section (P. 127/L). The para-wise comments have been prepared and are placed at F/y for approval please. After approval, the same would be sent to the Govt. Counsel at Calcutta for drafting the reply in this case.

Sugoswan
22/1/08

DS(L)

May kindly approve.

~~JS(15)~~

Pl. speak

22/1/08

DS(L)

22/1/08

321/DS(L)/08
22/1/08

184/JS(15)/08
23/1/08

Reference note above.

This was discussed with JS(15) today in his room when he desired to see the relevant papers. The concerned file is placed below. The following are also tagged -

- i) cabinet note - F/xx
- ii) Letter from Cab. Sectt. - F/y y
- iii) ATR - F/EZ
- iv) copy of reply of HM to the discussion under Rule 193. - F/PP

Sugoswan
28/1/08

DS(L)

May kindly approve the draft, as amended.

~~JS(15)~~

Pl. spk on the language of Govt. Secy. Ministry Defence reference

DS(L)

12/2

445/DS(L)/08
5/2

277/JS(15)/08
5/2

PS/PA - an leave

9

Pl. revise as discussed

US(A)

13h

7

(i) The Comments to MOD at Page 117/cor (F/MOD) are appropriately incorporated in here

(ii) The decision of Calbrech conveyed by Calbrech
Seeth placed at F/xy has also been
modified in para 8 and 9 of d/rchh.

May kindly answer.

2242

$$T_s (1/s)$$

Notes on pre-page may kindly be seen.

2. Meanwhile, we have received a copy of the Order dated 15th Feb 2008 passed by the Hon'ble High Court, Kolkata through the Ministry of Law and Justice, Kolkata vide their letter 21st Feb, 2008. As per the order of the Hon'ble High Court Kolkata states that this is a fit case for imposing costs on Union of India. The Court has directed that the affidavit in opposition may now be filed within a period of two weeks from the date on payment of 100 GMs (Rs. 1700/-) as costs. Reply there to if any may be filed one week thereafter.

3. The perusal of file shows that the Writ Petition on the subject was received from the Ministry of Law and Justice vide their letter dated 27.8.2007 (page 16 / corrs) in the ^{Concerned desk of} Ministry of Home Affairs on ~~31.08.2007~~ ^{3-09-2007 (page 14/c)}. The writ petition alongwith a photocopy of supplementary affidavit of the petitioners was received through the Advocate, High Court, Kolkata vide his letter dated 11th September, 2007 (Page 37 / Corrs) on 17.09.2007. The WP and the supplementary affidavit was sent to (i) MEA, (ii) Netaji Research Bureau, Kolkata, (iii) Ministry of Defence and (iv) Public Section, MHA, for their comments vide Co-ordination Section letter dated 12th Oct, 2007 (Page 114 / Corrs). At the same time, the Advocate was also

8

requested for seeking extension of time to file the affidavit. The Comments of Mod and MEA were received on 29.10.2007 and 4.12.2007 respectively. The comments of Public Section, MHA were received vide their letter dated 16 January, 2007 (Page 127 / Corrs) which were being awaited for preparing a consolidated reply on behalf of UOI.

4. Parawise comments were prepared and the file was accordingly put up on 22 / 1 / 2008 and the same is still under consideration in MHA.


5. In the above context, the matter was discussed with Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata over phone by the undersigned and also by DS (Legal). As per the views of the advocate, there are two options available with the UOI i.e. :-

(i) To pay the imposed costs of Rs. 100 GMs (Rs.1700/-) and to file the counter affidavit by 29th Feb, 2008.

Or

(ii) To file an SLP in the Supreme Court for quashing the judgement of the Hon'ble High Court, Kolkata.

Submitted for decision, please.


(Naresh Jaiswal)
Section Officer
27.2.08

US (Arms)

27/02/08
DS (L)
The Advocate has opined for (ii) - above and will send written advice shortly.
Although the petition was filed sometime in December, 2006, MHA after efforts obtained a copy of WP on 03-07-07 only. Thereafter, steps to obtain comments of M/o Defence, M/o E.A and Public Section (MHA) were taken immediately. The last comments of Public Section were received on 16-1-2007 after which we are in the process of preparing

next page please

Notes from p.3/ante may kindly be glanced through to recall the background of this case.

2. W.P. No.2754 of 2006 (PIL) filed by Shri Ashim Ganguly & Another, against UOI & Ors. is under process on this file. A copy of the W.P. is available at pp.38- /c.

3. While UOI, MHA was still in the process of finalizing its response to the petition received in the Ministry in September 2007, an order has been passed by High Court of Kolkata on 15.2.2008 allowing 2 weeks time to UOI for filing its response and simultaneously imposed a cost of 100 gms. (Rs.1700/-). While the order does not specify the reasons for which the court has imposed the cost, it appears that it is primarily on ground of delay. As the things stand, this Ministry was in the process of obtaining material from other constituents of UOI such as MOD, MEA etc. so as to file a comprehensive response to each of the points raised in the W.P. The process of obtaining material was, by and large, completed on 16th January with the reply of Public Section, MHA and our draft parawise comments have also been framed and are placed on file.

4. Although the advocate (Sh Tarun K Ghosh at Kolkatta) has advised us to preferably file an SLP before the Hon Supreme Court, (without specifying cogent reasons) it is felt that the desirability or otherwise of filing an SLP or alternatively agitating on the imposition of cost of 100 gms. by the Hon'ble High Court, Kolkata, the following facts which are relevant may be kept in view :

- i) It is a fact that period of 6 months have already been consumed for framing UOI's response to the W.P.;
- ii) Order dated 15.2.2008 is apparently an interlocutory order and not a final order on the WP. Normally, appeals do not lie against such interlocutory orders. Besides, in any case the factual position can be ascertained from M/Law by seeking their advice. However, the fact remains that cost of agitating the matter through an SLP would in any case be **many times more** than paying the cost itself.

5. As desired by JS(CS) (L.O. of JS(IS), undersigned discussed this matter over telephone with Sr. Counsel, Shri RN Das. On appraisal of the above facts, Shri Das was of the considered opinion that filing an SLP/ review/recall application in this case does not appear advisable.

6. In view of the foregoing position, the following steps are recommended:

- i) JS may kindly approve (i) payment of cost of Rs.1700 of High Court Kolkata; and (ii) the draft parawise comments already on file
- ii) Deputing Shri N. Jaiswal, Section Officer to Kolkata to meet the Govt. Counsel along with
 - a) The DD for the amount of the cost and;
 - b) Parawise comments for preparation of an affidavit in proper form which may be filed by Shri Jaiswal at Kolkatta immediately.

h.s.

(S.K. Malhotra)
Deputy Secretary(L)
28.02.2008

JS(CS) - L.O. of JS(IS)

*Spoken to HS
on 27/2/08*

28/2/08

① All formalities to engage R.N. Das senior counsel who is already engaged in another similar may be done immediately ~~in case~~ by observing all formalities.

② It is better to pay Rs. 1700/- than file SLP which may not succeed and also more costly.

③ The delay is due to non-receipt of petition in time (filed in court in December 2006 and received in MHA in ^{Sept} 2007) and also need to consult other Ministries.

④ Para-wise prepared may be sent with S.O. to R.N. Das along with DD by air. *28/2/08*

*I agree
all further
action be taken
most urgently*

1/5 JS(CS)/(IS) 28/2/08

*CF 366/08/125
28/2*

Reference notes on pre-page

The undersigned went to Kolkata on 2.03.08 with the para-wise comments on W.P.No.27541(W) of 2006 filed by Shri Ashim Kumar Ganguly & another vs.UOI & ors.before the Hon'ble High Court of Calcutta praying inter-alia for (i) not incurring further expenses from the Public Exchequer for maintenance and upkeep of Renkoji temple,Japan(ii)placing the report of Justice Mukherjee Commission of Inquiry before the Parliament for open debate or discussion. On reaching Kolkata I contacted the Govt. Counsel, Shri Tarun Kumar Ghosh on 03.03.2008 and handed over the para-wise comments for filing before the Hon'ble court. The comments prepared by us did not incorporate the comments of respondent no. 5 viz.,Netaji Research Bureau, Kolkata. Therefore, the chairperson, Netaji Research Bureau was contacted by the undersigned & got their comments also incorporated in the affidavit-in -opposition prepared by the Govt. Counsel on the basis of para-wise comments. The Affidavit was signed & the same was affirmed by me on 5th March,2008 before the Commissioner of Affidavit, High Court, Appellate side, Kolkata. *the affidavit was vetted by Shri R.N.Das, Sr. Govt. Counsel.*

2. A demand draft of Rs 1700 (Rupees one thousand seven hundred only) drawn in favour of Registrar,High Court of Kolkata(as per advice of Govt. Counsel on phone) was also handed over to the Govt. Counsel for depositing the same in the court for making the payment of cost imposed on U.O.I. by the Hon'ble High Court vide their order dated 15.02.2008. The Counsel advised that affidavit & demand draft will be submitted to the court & advised me to return to Delhi. However as the demand draft was not drawn in favour of Registrar General, High Court of Calcutta, the Counsel informed on phone that the draft drawn in favour of Registrar, High court of Calcutta cannot be deposited. Now it should be drawn in favour of the Counsel as he was requested over phone to deposit the cost on behalf of UOI to the Registrar General, High court of Calcutta from his own account which could be reimbursed by us. Accordingly, the Govt. Counsel has informed on 18. 03.2008 that he has deposited the said amount of Rs 1700/ from his own account and has also filed affidavit in the court. The case will be listed in due course. The amount of Rs 1700/ may be reimbursed to the Govt. Counsel, Shri Tarun Kumar Ghosh by amending the sanction order after we receive the receipt etc., from the Govt. Counsel *and the D.D. already given to him.*

VS (Arms) - on leave
DSC (Kolkata)

(Signature)
20/3/08
(NARESH JAISHANKAR)
Section Officer

Notes above may kindly be seen w.r.t.

Contd..

from prepage:-

-12-

notes from page 7/ante. Now with the filing of affidavit and paying cost imposed, damage control exercise has been completed. We may await for listing of the case.

2. We may obtain confirmation of the inputs verbally given by Netaji Research Bureau, (respondent no 5) which have been incorporated in para 12 of the affidavit on their behalf.

3. May kindly see for information.

JS(15)

He
25/3/08

DSL

He
25/3

991/DS(L)/08
20/3/08

634/JS(15)08
20/3/08

US(A)
Soc(ON)

Reference notes above

Draft letter to the chairperson, Netaji Research Bureau, Kolkata is put up for approval please. Draft Sanction order for Rs 1700/- in favour of Gnt. Comd or draft put up please

US(Amy)

For kind approval of.

US(L)

US(A)

He
26/3
He
27/3/08

F.R (P.191-19510)

Subject: WP No 27541/2006 - Sh. A K Ganguly & others

FR is a letter dt. 24.7.2008 from JOCFA enclosing therewith affidavit filed by Mirt Debjani Chakrabarti, Advocate in the above case. In the reference mentioned has been made to the files/papers of MCA/Defence/PMO. We may request them for their comments as heretofore

Amranch/
4/8/08

DS (Legal) Please issue /
14/8
LS(L)

As desired, the file along with a brief note about the WP. No. 27541/2006 is submitted for perusal of JS (JS) for the meeting to be held in PMO on 11/9/08.

Amranch/
30/8/08

JS (JS)

Secy PMO took a meeting on 19/08 in regard to the Additional Affidavit no 2133 in Writ Petition No. 2754/06 (Sri Ashim Kumar Ganguly & others vs Union of India) in regard to the various Commissions of Enquiry on the subject of mysterious disappearance of

Netaji Subhas Chandra Bose, Ministry of Law, External Affairs, & Parliamentary Affairs were represented.

As PMO, External Affairs, Parl. Affairs are impleated as respondents, in order to have a consistent response, it was felt that a common affidavit would be filed (as before), that a senior counsel would be engaged for this purpose and that MHA may coordinate this effort.

Accordingly action would be initiated. Brief Note at Fly 'it' may pl. see.

Lalan
11/9/08

11/6/08
11/9/08

Discussed with JLC (SS) on 4/9/08 when DS (Legal) was also present. We have to prepare a status note and send the same to MOL. Amich 5/9/08

seen. I may be kept apprised of the progress of action taken.

Qesh
21/9/08

5805/SS(4)/08
4/9

2041/25(15)/08
11/9

2387/SS(4)/08
1/5/08

P. 3125/4/08
2/9

WS(L)
2/9

DS(L) 2/9 Shaban (Sis)

Sch: CAN 2133 of 2009 - WP 27541 (W) of 2006 Sri Ashim K. Gargoly - reg. death of Netaji Subhas Chandra Bose

FR is a letter dt. 31.7.09 from M/o Law and Justice, Branch Sectt., Calcutta enclosing therewith an application for addition of names of Sh. Surjit Duggal, Sh. Keshav Bhattacharjee, Advocate, Sri Mandalal Chakraborty and others in the writ petition No. 27541 of 2006.

2. The case is coming for hearing on 20/8/09.

3. The matter was discussed with Sh. R. N. Das, Sh. Counsel who is looking after the case over phone on 18/8/09. He stated as under:

(i) The decision taken by Parliament on the report of Justice Mukherjee Commission may be sent to him.

(ii) Para wise comments may be sent to him later on.

(iii) No representative of MHA need to attend the Court on 20/8/2009.

16
- 16*
(From message)

4. In respect of (i) above, the information received from Lok Sabha Secy. (F/A) and Rajya Sabha Secy. (F/B) may be sent.

5. In respect of (ii) above, we may write to PMO and MGA for their comments/ views as particular reference has been made to the files of PMO & MGA.

6. DFA for approval re.

Amich
19/8/09

DS (Legal)

hsh
12/8

us(L)

Tried to contact both Sh. T.K. Ghosh (M.No. 9433506066) & Sh. R.N. Das, Govt Counsel (M.No. 9830268681) to ascertain the next date of hearing but there was no response from both.

Amich
24/8/09

The case was discussed with Sh. R.N. Das, Govt Counsel over phone today i.e. 25/8/09. Further, this was also discussed with Sh. G.S. Mahabar, Jr Central Govt. Advocate of the Branch Office of M.O. Law, Calcutta.

They were of the view that the case will come up

again after Pooja Vacation (during which Court remains closed). Meanwhile, MHA may send the para-wise comments of the application, CAN 2133 of 2009. Thereafter representative of MHA may also visit to file the counter-affidavit and also to brief the counsel.

May kindly all.

Anur Chel
25/8/09

DS (Cgpf)

Lets keep pursuing with other concerned
depts.

4/8/09

1/8/09

A reminder may be put up
to the concerned Depts.

Anur Chel
26/8/09

to (Cdy)

Ref. FR.

This is reply received from PMO w.r.t our letter dated 19.8.09. They have requested ^{us} to take necessary action. But F.No. 23(UIS)/56-57 PM and F.No. 800/6/C/1/20- Pol ~~pertain~~ mentioned in the Petition pertains to PMO. These files are not available with MHA. It is for PMO to prepare para-wise comments. Accordingly

23/5/2009
26/8

12

-18-

DEA is put up for approval
please.

US (Legal)

Amuel
3/9/09

BW
2/9/09

80 (Leban)

Subject : CAN 2133 of 2009 – WP 27541 (W) of 2006 Shri Ashim Kumar Ganguly – regarding death of Netaji Subhash Chandra Bose .

FR is a letter dated 31.7.2009 from Ministry of Law and Justice, Branch Sectt. Kolkata enclosing therewith an application for addition of names of Shri Surajit Dasgupta, Shri Keshav Bhattacharjee, Advocate, Shri Nandalal Chakraborty and ors in the WP No. 27541 of 2006.

2. Earlier, the case was listed for hearing on 20.8.2009 and now is likely to come up again after the festival season (as informed by Shri R N Das, Govt. Counsel over phone).

3. In Para 8 of the application (page 240-241 /C) references have been made to the files of PMO. Therefore, the PMO was requested for their comments, so that the reply to the para may be prepared based on their comments. PMO vide their ID Note dated 15.9.2009 instead of sending their comments / reply has forwarded relevant 2 files (placed below) stating that MHA may draft an appropriate affidavit in the matter.

4. Parawise comments on the application for addition of names have been prepared and placed below for approval before the same are sent to the Government Counsel.

Amar Chand
(Amar Chand)
US (Legal)
16.9.2009.

JS
16/9/2009

DS (Legal)

JS (15/9)

JS
18/9

SS (15)

JS (15-11)

JS
22/9

JS
23/9

F 1909/25(1522)/14
18/9

3642/5509
22/9

JS (L)
22/9

Subject: CAN No. 2133 of 08 – W.P. No. 27541 (W) of 06 – Sri Ashim Ganguly & Anr. – Vs. UOI & Ors. And W.P. No. 8215(W) of 2008 – Sri Subhas Chandra Basu & Anr. – Vs. UOI & Ors.

✓ FR Ministry of Law (Deptt. of Legal Affairs), Kolkata vide letter dated 15th October, 2009 has enclosed two letters from Tarun Kumar Ghosh, Advocate, High Court, Calcutta dated 27th August, 2009 each. In his letter dated 27th August, 2009, the Advocate has stated that the cases were listed on 21st August, 2009 and the hearing was attended by him alongwith Shri R.N. Das, Ld. Senior Counsel. Both the Writ Petitions relates to the dis-appearance of Netaji Subhas Chandra Bose.

2. Ministry of Law has requested to depute one conversant officer alongwith brief history, parawise comments and necessary instruction to this office and meet our panel Counsel for further necessary action.

3. In the above context, it is stated that parawise comments in WP No. 27541(W) – CAN No. 2133 of 2008 have already been sent on 24th September, 2009.

4. In the case of WP No. 8215 (W) of 2008, parawise comments were sent on 2nd April, 2009.

5. In spite of repeated requests, Govt. Counsel has not informed/confirmed to us whether the para-wise comments of MHA have been filed in respect of both the writ petitions.

6. In addition to the above two writ petitions, there is another writ petition in the High Court of Kolkata on the same subject i.e. **WP No. 2003 / 2006 - Shri Rudra Jyoti Bhattacharya - Vs. - Union of India & Ors.**

7. Therefore, three writ petitions are pending in the High Court of Kolkata.

8. The representative of MHA may, in addition, to the information as desired by M/o Law, discuss about clubbing of the three cases.

9. Incidentally, it may be mentioned that Mukherjee Commission was set up by the Govt. of India on the basis of the judgement of the Kolkata High Court dated 30th April, 1998 directing the Union of India to re-inquire into

(from mortgage)

- 21 -

the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry.

10. Keeping in view the above, we may depute two officers from IS-II Division dealing with the above cases to discuss with the Govt. Counsel about clubbing of the cases as also about finalization of the para-wise comments.

BK Rekhi

(B.K. Rekhi)
SO(Cdn.)
6.11.09

US(Legal)

Anuch

6.11.09

DS(Legal)

Either DS(L) + US(L) or US(L)
may be deputed.

DS(US-II) - on return for leave
9/11/09

Rekhi
6/11/09

US(L) may pl. attend.

[Signature]
9/11

Discussed with Sh. R. K. Das, Sr Counsel and with Sh. T. K. Ghosh, Advocate over phone on 9th & 10th November respectively. They have stated that they would discuss between them on 11th November, 2009 about calling for the representative of MHA for discussing the case. They further stated that MHA may contact them again on 11th November (evening) and they will let

2825/DS(L) 09
9/11

2207/DS(US-II) 09
9/11

him know about the sending of
rehearsing of MHA to Calcutta.
For information pl.

DS (Legal)

10/11

Amr Ch
10.11.09

10/11

48(L)

So (Can)

Again discussed with Sh. Tarun Kr. Ghosh,
Advocate on 12/11/09 over phone. He stated
that the Kolkata High Court will resume
its functioning from 16th Nov. 2009 as presently
there is strike in the court. Therefore,
the official of MHA may visit Calcutta
between 16th to 20th Nov. 2009.

In view of the above, if approved,
the visit of the Under signed to Calcutta
may be as under:

15.11.09

Departure Delhi by
GC-264 at 5.00 PM

Arrive Calcutta
at 6.55 PM. a

17.11.09

Departure Calcutta by
GC-201 at 5.00 PM

Arrival Delhi
at 7.20 PM

For approval pl.

Amr Ch
12/11/09

12/11

May kindly approve.

DS (Legal)

DS (S-2)

12/11

Dg

48(L)

13/11

22/11/2009
12/11

- 23 - 29

Subject: CAN -2133 of 2008 - W.P. No. 27541 (W) of 2006 Shri Ashim Kumar Ganguly & Anr Vs UOI and Ors.

As approved, the undersigned visited Kolkata in connection with the above mentioned Court case. The Court case relates to the disappearance of Netaji Subhash Chandra Bose.

2. On 16.11.09 in the morning I contacted over phone Shri R. N. Das, Senior Counsel to ascertain his convenience so that he could be briefed. He informed that he had to rush to Delhi in connection with an urgent meeting in the Ministry of Law and directed to meet his junior Shri Tarun Kumar Ghosh, Advocate who is also looking after the case.

3. I met Shri Ghosh, Advocate in his Chamber in the Kolkata High Court premises. The following documents were given to him.

i) Report of Justice Mukherjee Commission of Inquiry on the disappearance of Netaji Subhash Chandra Bose.

ii) Copy of Parawise comments alongwith a brief note on the Write Petition.

iii) Views of Lok Sabha and Rajya Sabha Sectt. received about the discussion in Parliament about the laying of the report of the Justice Mukherjee Commission of Inquiry.

iv) Opinion of SG obtained by MHA in the above referred Writ Petition.

4. The Advocate ^{has} gone through the above papers/report. After going through the papers and discussing the case with the undersigned, he expressed his satisfaction and stated that no more papers/records from MHA is required at the present.

5. The Advocate was also requested to keep MHA apprised in the case from time to time.

6. A request was also made to the Advocate about clubbing of the other two Court cases which are also pending for hearing in the Kolkata High Court on the same subject. These cases are as under:

(from page)

24

24

- i) Writ Petition No. 2003 of 2006 – Rudra Jyoti Bhattacharya Vs UOI and Ors.
- ii) Writ Petition No. 8215 (W) of 2008 – Shri Subhas Chandra Basu & Ors vs UOI and Ors.

The Advocate stated that this issue can be taken up as soon as the case comes for hearing in the Court.

7. On 17.11.2009, I met Shri G.S. Makker, Jr. Central Govt. Advocate in the Kolkata Branch of the Ministry of Law. He was briefed about the above discussion with the Advocate.

8. Submitted for information please.

Amar Chand
(Amar Chand)
US(Legal)
18.11.09

DS(Legal)

JS(15-II) - on return to Tom
19/11

19/11

19/11

SO (cdm)

2286/JS(15-II)09
19/11

US(L)
19/11

25-
Cdn Section

25

Sub:- CAN No. 2133 of 2008 - Returning
of files of PMO.

Two(2) files of PMO bearing No. 800/6/C/11/
1990-POL and 23(11)56-57-PM/Norowen
received from PMO in connection with the
above mentioned court case. We have already
prepared our parawise comments and the
same has been sent to the Govt. counsel
for further necessary action. These files are
no more required in MHA. We may therefore
return these files to PMO.

USC (Legal)

80(Cdn)

Amel
6.11.09

B. K. Dhilli
6/11/09

-26- 26

Subject: CAN No.2133 of 2008 in Writ Petition No.2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

✓ FR
Reference dated 3.2.2010 from the Sr. Govt. Advocate & In-Charge in the Ministry of Law & Justice, Kolkata enclosing therewith the letter dated 22.1.2010 from Shri Tarun Kumar Ghosh, Advocate.

2. The Advocate has indicated that case was heard on 15.1.2010 and will be further heard on 19.2.2010. The said letter was received only on 19.2.2010 in the MHA. However, the matter has been discussed with Shri G.S. Makker, Jr. Central Govt. Advocate over phone today informing him that all the papers were made available to Shri Tarun Kumar Ghosh on 16.11.2009 as were desired by him. In this connection notes on page 23-24/ante may kindly be seen. In view of this Shri G.S. Makker has stated that he would further discuss the matter with Shri Tarun Kumar Ghosh and let MHA know if any further information is required. Matter is being followed up with the Advocate as well as Ministry of Law.

2. Submitted for present information please.

Amar Chand
(AMAR CHAND)
US(Legal)
25.2.2010

DS (Legal)
JS (Legal)

Pl follow up on phone / fax.

2/3

re sent with reminder/letter to SGA.

2/3
SO (Cdr)

P388/28(152)/10
2/3

45/1
2/3

Ref. pre-page

With reference to letter dt 3/2/2010 from the
Sr. Govt. Advocate & In-charge in the M/o Law & Justice,
Kolkata. We may request the Sr. Govt Advocate to
indicate the present position of the hearing held on
19.2.10.

D.P.A for approval hl.

ML
3/3/10

SO (Coln)

US (Legal)

SO (Cdr)

Amclt
4/3

BK Ahlu
4/3/10

28

28

Ministry of Home Affairs
IS-II Division

Subject: Tour report in respect of visit to Kolkata High Court for filing affidavit in respect of WP No. 2003/2006 – Rudhra Jyoti Bhattacharya vs Union of India & others.

As per the approval, the undersigned visited Kolkata from 13th to 15th May, 2010 in connection with the filing of two affidavits in respect of the above Writ Petition in the Kolkata High Court.

2. On 13.5.2010, I met Shri S.S. Sarkar, Addl. Govt. Counsel in the Ministry of Law, Kolkata Branch and handed over the para-wise comments on the Supplementary Affidavit as well as affidavit in opposition on behalf of the Government of India to be filed in the Court. After completing certain formalities, I alongwith one official of the Law Ministry visited the Kolkata High Court and the two affidavits were filed as under:

i) Affidavit on behalf of the respondents in opposition vide High Court's Dy No. 166 dated 13.5.2010.

ii) Affidavit in opposition to the Supplementary Affidavit vide Dy. No. I 165 dated 31.5.2010.

3. Thereafter, I met Shri G. S. Makkar, Jr. Govt. Standing Counsel in the Ministry of Law, Kolkata Branch to know the status of other two Court cases and their position has emerged as under:

i) W.P. No. 27541 (W) of 2006 – Sh. Ashim Ganguly & Anr Vs Union of India.

Shri Makkar handed over a copy (F/A) of the letter dated 12.4.2010 written by Shri T. K. Ghosh, Advocate, according to which the hearing was held on 9.4.2010 and the next date of hearing in the case is 18.6.2010.

ii) W.P. No. 8215(W) of 2008 – Subhas Chandra Basu Vs Union of India.

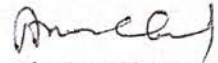
A copy of the letter dated 12.4.2010 (F/B) written by Shri T. K. Ghosh, Advocate was given by Shri G. S. Makkar, according to which the case was last heard on 9.4.2010 and the next date of hearing 18.6.2010. However, the Court has also directed to file Affidavit in Opposition by 21.5.2010. I informed Shri Makkar that para-wise comments of MHA were sent on 2nd April, 2009 and the matter was also followed up both with Ministry of Law as well as with the Advocate but no information has been received as to whether the affidavit has been filed or not. He checked up his records and informed that the para-wise comments received from MHA has already been sent to Shri T. K. Ghosh for further necessary action and the factual position may be ascertained from him. I met Shri T. K. Ghosh, Advocate, Kolkata High Court who informed that

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possibly he has not received the para-wise comments but, however, he would check his records and directed me to contact him at 8.00 PM. I contacted him and he informed that he has not received the para-wise comments from the Law Ministry. He further stated that you may meet me on 14.5.2010 in the Court itself and give a copy of the para-wise comments so that further action in the matter could be taken.

4. I met Shri T. K. Ghosh, Advocate on 14.5.2010 in the Kolkata High Court and handed over him a copy of the para-wise comments of MHA sent on 2nd April, 2009. He also directed me to meet Shri R. N. Das who is Senior Counsel in the case in the afternoon. I met Shri R. N. Das in the afternoon on 14.5.2010 and apprised him of the factual position who desired that a copy of the para-wise comments may also be given to him and also called Shri T. K. Ghosh was discussion. A copy of the para-wise comments was also given to Shri R. N. Das. After discussing the matter, the Advocate stated that he would be taking further time from the Court for filing the affidavit but it should be filed by 7th June, 2010 (from 22nd May to 6th June, 2010 being Court's vacation).

5. The above is submitted for information and further follow up.


(Amar Chand)\
US(Legal)
17.5.2010

~~DS(Security)~~

The report submitted by US(Legal) after his visit to Kolkata High Court may be seen. From the report, it is evident that the Govt. Counsels at Kolkata High Court are not taking expeditious action and the follow up by them is also very slow.

2. Two affidavits have been filed on 13.5.2010 and 13.5.2010.

3. As regards Writ Petition No.27541 of 2006, the next date of hearing is scheduled to be held on 18.6.2010 at Kolkata High Court. US(Legal) has confirmed that filing of affidavits and other formalities in this case are completed.

4. As regards Writ Petition No.8215 of 2008, though Ministry had furnished the parawise comments as early as on 2.4.2009, the Counsels have not taken any action. US(Legal) has now personally handed over a copy of the parawise comments on 14.5.2010 to them. The Advocate has assured that he shall file the affidavit by 7th June 2010 and would also take extension of time in this case.

—3/—

30

5. It is felt that there is a need for constant follow up of these court cases and US(Coord.) and SO (Coord.) be in close touch with the Counsels so that there is no problem faced in future. The dealing officers may also if required visit Kolkata and brief the Counsels and file the affidavit be fore 7.6.2010.

6. JS(IS.II) may kindly see for orders.

(K. Muralidharan)
Deputy Secretary (S)

18.05.2010

JS(IS.II)

It is ok.

What is the matter?

It put up main file also

JS
18/5/10

JS(S)

It put up
By
18/5

Use (S)

18/5/10
So ccdnl

Ref. letter at p. 29-30/m.

2. I discussed this issue with Addl. Asst. Gen. who desired that a communication be sent to him giving the brief history of the Court Case and that he has agreed that he shall give directions to the concerned Court. Counsel to take expeditious action.

2. A draft Do letter is placed before for approval of.

17/3/58/10
7/6

7/6
DS(15)

DS(15)
7/6

DS(15)

Mr. put up = 10/6

7/6

10/6
so accepted
10/6

10/6
10/6

-32-

Ministry of Home Affairs
IS-II Division

Subject:- Tour Report in respect of visit to Kolkata High Court in the matter of hearing of W.P. No. 2003/2006 – Rudra Jyoti Bhattacharya vs Union of India.

As per the approved orders, the undersigned proceeded to Kolkata in the morning of 8th July 2010 along with Smt. Baljeet Kaur Rekhi, Section Officer and carried documents for handing over to ASG and briefing him in connection with the above case.

2. The ASG fixed the meeting at 5.30 pm for the briefing. Copies of the following papers were handed over to ASG.

(i) Report of the Justice Mukherjee Commission (Vol. I and Vol. II-A & II-B).

(ii) Photocopy of original W.P. No. 2003 of 2006 and affidavit of UOI. Copy of affidavit on ATR and copy of supplementary affidavit.

(iii) Photocopy of WP 27541 of 2006 – Shri Ashim Kumar Ganguly Vs Union of India draft affidavit sent by the Ministry.

(iv) Copy of WP No. 8215 (W) of 2008 Subhash Chandra Bose Vs UOI and parawise comments sent to the Addl. Govt. Advocate / Incharge, Department of Legal affairs Branch Sectt., Kolkata (parawise comments also handed over to Govt. Counsel Shri T.K. Ghosh on 14.5.2010).

3. ASG desired to know the stand of the Govt. of India on the Writ Petitions as to whether GOI was in favour of another commission. It was informed:

(i) Govt. was not in favour of any other commission in the matter.

(ii) That Netaji Subhash Chamdra Bose is dead.

33

93

-2-

(iii) Govt. of India was not incurring any expenditure on the upkeep of ashes preserved at Renkoji Temple at Taihoku, Japan

4. The ASG desired to have the copies of discussions on the report of Justice Mukherjee Commission of Enquiry Report in both houses of Parliament as soon as possible. His junior advocate Sh. Nizamuddin also desired to have one full set of JMCI Report.

5. ASG was informed that parawise commenrts on W.P. No. 8215/2008-Subhash Chandra Basu Vs. UOI were prepared and sent to Smt. S. Bhattacharya, Additional Govt. Advocate/Incharge, Branch Sectt. Kolkata on 2.4.2009 and parawise comments were also handed over to Shri T.K. Ghosh, Government Advocate on 14.5.2010 but affidavit has not been prepared and filed. ASG desired that a strict letter be issued and a copy marked to the Hon'ble Law Minister.

6. ASG also desired that we may remain present in the Court to watch the proceedings. Accordingly, on 9th July, 2010, the case i.e. W.P.No.2003/2006 – Rudra Jyoti Bhattacharya & Ors Vs. UOI &Ors which was at first position in the list in Court No.1 was presided over by Hon'ble Chief Justice Shri J.N. Patel and Justice Shri Bhaskar Bhattacharya. Learned ASG filed both the affidavits. The Hon'ble Court desired, both, the petitioners and the respondents, to file synopsis of the case. The matter is now listed for 23rd July, 2010.

7. In the afternoon, the undersigned met Smt. S. Bhattacharya and brought to her notice that Ministry has not received the affidavit in WP No. 8215/08- Subhash Chandra Basu Vs. Union of India & Ors. The parawise comments had been sent to her on 2.4.2009 and reminders were also sent to her and that Copy of the parawise comments were also handed over to Shri T.K. Ghosh on 14.5.2010 by Shri Amar Chand, Under Secretary, MHA on his visit to Kolkata. Smt, Bhattacharya has now directed Shri Ghosh to prepare affidavit in consultation with ASG and sent the same to this Ministry for affirmation. She has directed the undersigned

that the draft affidavit may be got typed on green sheet when received, affirmed by the Oath Commissioner, High Court, Delhi and sent to them alongwith 4 copies thereof.

The above is submitted for information.

L.P. Shrivastava
(Smt. L.P. Shrivastava)
US (NSA)
12.7.2010

~~DS (S)~~

Sy
12/7

~~TS (S) 12/7~~

Please chase the matter
and inform me when the
affidavit is received

Pratap
13/7

~~DS/S~~

1922/2509/10
13/7

27/75 (15-17)
13/08/17

19/150A
5
13/7

H
13/7
SO (cdm).

We have received a supplementary petition to the W.P. No 27541/2006 in the case of Ashim Kumar Ganguly & Ors vs. Union of India & Ors. We may seek pairwise comments from MEA & also send internal reply to Counsel. DFA-E & II for consideration pl.

Wt/Prady
22/10/10

DS(S)

Sg
22/10/10
Wt/Prady

Ref. note above

The reply from MEA is still awaited. We may remind them as per DFA.

US(NSA)

BK/Prady
11/11/10

DS(S)

Wt/Prady
11/11/10

Sg
11/11/10
US/Cmt

17/11
SO/Cmt

Ref. FRP 320/c

Sub: W.P. No. 27541 (W) of 2006
 Sh. Ashim Kumar Ganguly + Anr.
 Vs - Union of India + Ors.

This is a letter on above mentioned W.P. from Ms. S. Bhattacharya, Senior Court Advocate + Incharge, Kolkata for sending peremptory comments in order to prepare Affidavit in opposition as the case is coming up for hearing on 13.1.11.

We have requested MGA to send their comments by 2nd Nov. 2010. vide OM dated 27th Oct. and sent reminder on 11th Nov. 2010. We may again send a reminder to expedite the comments as per DFA.

b-309/c.

✓ b312/c.

USC (W8A)

D/S(S)

(BN) dhi
 29/12/10

Lat. Pandey
 28/12/10

29/12

US (Court)

29/12
 Sec (Court)

Sub:- Para-wise comments on the Supplementary affidavit filed by Sh. Ashim Kumar Ganguly in W.P. NO. 27541 of 2006.

Para-wise comments have been prepared and placed on file for approval. We may also write to Netaji Research Bureau to file reply to para 7(ii) of the S.A. as per DFP.

Bhaskar
3/2/11

Letter para 7(3) sent by Jore.

US(NSA)

'A' for consideration. P. 124/ep. 149/c may please be referred to.

Subhash
3/2/11

DS(S)

- ① As revised pl.
- ② Pl. sent a Supr letter to ACU, Kalyanpur.

Subhash
7/4/2011

V. H. Wooty

1. A draft letter to ASB for consideration pl.
2. Draft Para-wise reply to Supremacy Petition for consideration and approval pl.

DS(S) Subhash
7/2/11
Pl. put up a note for approval of P. 124/ep. 149/c
US() Subhash
7/4/2011

Supplementary Affidavit has been filed by Shri Ashim Kumar Ganguly and others in Writ Petition No.27541 of 2006 – Union of India and others.

2. Netaji Research Bureau are the Respondent No.5. Para-7(iii) of the Supplementary Affidavit relates to them. They have been requested to indicate their reply in the above matter. Telephonically they have informed that they will not file a separate Counter Affidavit and that MHA may include their views. Further they are not obtaining any grant from the Government for the research work.

3. Based on the reply received from PMO and Ministry of External Affairs, draft para-wise replies have been prepared to the above Supplementary Writ Petition. This will be sent to Additional Solicitor General, Kolkata High Court for drafting the Affidavit on the behalf of the Union of India & Others.

Submitted please.

Le P. Subh
8/2/11
(Smt L P Shrivastava)
Under Secretary (NSA)
8.2.2011

176/Dis/2011
8/2

JS(S)

Am
17/2/11
BCHS-4
Amel
10/2/11

US (NSA)

We may again call for
specific comments from ME A as per
dga

Le P. Subh
11/2/11

28/2

Am
11/4/2011

USC (Am)

Supplementary Affidavit has been filed by Shri Ashim Kumar Ganguly and others in Writ Petition No.27541 of 2006 - Union of India and others.

Note on Page-38/N may please be seen. Based on the reply received from Netaji Research Bureau and Ministry of External Affairs, the Para-wise comments in Paras 5 and 8 have been edited. We may send these Para-wise comments to Shri G. S Makker, Junior Central Govt. Counsel for preparing the Counter Affidavit, as per DFA.

(B K Rekhi)

(B K Rekhi)
Section Officer
18.2.2011

~~US(NSA)~~

~~DS(S)~~

Lat Phib
18/2/10

by
18/2

~~JS(11-11)~~ *Rygar*
18/2/11

~~DS(S)~~

by
18/2

US(Coul)

We have not received the counter Affidavit from M/Law and Justice, Deptt. of Legal Affairs, Kolkata. We may send a reminder as per DFA.

~~US(NSA)~~

~~DS(S)~~

The inf. has been
in knowledge of *Lat Phib*
by Put up
27/4/11
US(Coul)

(B K Rekhi)
28/4/11

HA
28/4
80(cdr)

38855 (15-11/11)
18/2

p338-340/c

Ref. FR p. 375/C -40-

Sub: Engagement of Shri Shakeel Akhter, in W.P. No. 27541 of 2006 - Ashim Kumar Ganguly Vs. Union of India & Ors.

An e-mail has been received from Shri Shakeel Akhter intimating that he has prepared counter affidavit in the above mentioned case on the direction of Shri Somenath Bose, Sr. Central Government Counsel. He has requested that Branch Secretariat, Kolkata be approached for his appointment as Government Counsel on behalf of Union of India in the above mentioned case. We may request Branch Sectt., Kolkata for appointing Sh. Akhter as Government Counsel on behalf of Union of India as per DFA-III

BK Rekhi

(B K Rekhi)
Section Officer
12.5.2011

US(NSA)

DS(S)

13/5/11

13/5
V/c Canh

Fair letter for signature please

13/5
Go (canh)

DS(S)

BK Rekhi
19/5/11

19/5

19/5

20/5
Go (canh)

Sub: Supplementary Writ Petition No.27541(W) of 2006
Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors.

The case regarding disappearance / death of Shri Subhas Chandra Bose came up for hearing on 1.7.2011. The undersigned telephonically contacted Shri Mohd Akhter, Advocate regarding the development of the case. He has informed that the next date of hearing has been fixed on 19.8.2011.

2. The Counter Affidavit which Shri Akhter sent by mail pertains to the original petition of the Writ Petition 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors.

3. The Supplementary Affidavit from Shri Ashim Kumar Ganguly dated 10th September, 2010 was received on 30th September, 2010. Para-wise comments in this connection were sent by the Ministry to Shri G.S. Makker, Jr. Central Govt. Advocate, Deptt. of Legal Affairs, Kolkata on 18th February, 2011 with a copy to ASG, Kolkata and Shri R.N.Das, Sr. Counsel, High Court Calcutta. We may send a reminder to Shri G.S.Mekkar, Jr. CGA as per DFA.

(B.K.Rekhi)

(B.K.Rekhi)

Section Officer(Cdn)

22.7.2011

US(NSA)

Dir(S)

US(NSA)

Lat. Rekhi
22/7/11

Bina Kesarad
22/7/11

Fair letter for signature please

(B.K.Rekhi)
27/7/11

Dir (S)

Bina Kesarad
26/7/11

US(NSA)

p. 375-387/C

x p 292-300/C

@ p 342 to 360/C

1/1
25/7
Sol Cdn

Ref. F.R. p. 396/C.

A letter has been received from Jr Central Govt. Counsel requesting to depute one conversant officer with all relevant documents of the case and furnish para-wise comments, brief history for drawing Affidavit in opposition.

It is also requested to pay incidental cost to the Advocate on Record for filing Vakalatnama and Affidavit in opposition.

It is pertinent to mention that we have sent the para-wise comments again to the Counsel Sh. Shakeel Akhtar and ASG, Sh. Farooq Razak on 27.7.2011. Today the undersigned talked to Sh. Akhtar and he has informed that he has received the para-wise comments and has prepared the CA which has been submitted for its final approval. He will send the CA on 11.8.11. The case is coming up for hearing on 19.8.11

Submitted please.

For information.

US (USA)

Dy(S)

US (USA).

Letiably

8/8/11

Bina Banaad
8/8/11

BK/MS
8/8/11

8/8/11
SO (cdn)

Ref. note on p. page -

The Counter Affidavit
w.s.t. Supplementary Writ Petition No.
27541 (W) of 2006 of Shri Ashim
Kumar Granguly and Mr Vs. VOI and
Others dated 10.9.2010 has not been
received so far. We have sent
parawise comments on 21.2.2011 to
Sr. Central Court Counsel. In his letter
dated 17.8.11 he has already written
that parawise comments were sent
to Sh. Somnath Bose
for preparing Counter
Affidavit. In

We may again remind Sr.
Central Court Advocate, Kolkata
with a copy to Sh. Somnath
Bose, ASC and Sh. Shkeel
Akhtar.

DFH Please.

(BKuhhi)
31/10/11

US (NSA)

In early Oct. 11 we had
also requested Sh. Shkeel Akhtar to send by
early the affidavit when had

✓ p.292-300/c

✓ p.343/c

✓ p.397/c

informed that the Haibel court will meet only after Diwali holidays. However no affidavit has been received as yet. We may therefore write to J. C. Advocate, Min. of Law (Kolkata Branch) for getting the matter expedited. DFA.

Lal. Thakur
31/10/11

~~Dis (S)~~
~~US (SA)~~

Bina Khandel
31/10/11

H
1/11
so (cdn)

Ref. note above.

The Counter Affidavit are still awaited in case of Sh. Ashim Kumar Ganguly. We may again write a letter to Central Govt. Advocate as per DFA.

~~US (p/sa)~~

Bina Khandel
7/12/11

Lal. Thakur
7/12/11

~~Dis (S)~~

Pl. put up a D.O. letter from J (ED 5) to

Add. Solicitor General. Also telephonically try to ascertain the status of the case.

Bina Khandel
8/12/11

H
7/12
so (cdn)

~~US (SA)~~

Reference note on pre page

D.O. letter from JS(IS-II)
as desired is put up for approval
Please

BK Adhi
9/12/11

US (NSA)

Div/S

late Huby
9/12/11

Bina Beraad
9/12/11

~~JS (IS II)~~ Myoel
9/12/11

Dipls

to
9/12/11

US (NSA)

Fair letter for signature Please

BK Adhi
12/12/11

Director/S

Bina Beraad
12/12/11

~~JS (IS II)~~ Myoel
12/12/11

Div/S

to
12/12/11

~~US (NSA)~~

Pl. Issued
4/1
13/12

Reference note on pre page.

We have sent reminder to Tr. Central Govt. Advocate on 2.11.2011 and also sent another reminder to ASG. Shri Farooq Razak, ^{ASG} on 12.12.2011 for sending the Counter Affidavit. The Counter Affidavit is still awaited. We may send another reminder for sending Counter Affidavit and intimating the next ^{date} hearing as per D.F.A.

Ruchica

26/6.

US/ (VSA)

[Signature]
26/6/12

SuMo - 2754 (W)/2006 - Sh Ashim K. Ganguly vs UOI & Anr

We have sent perusal comments to Tr. Central Govt Counsel on 18.2.2011 & copy to ASG, Sh. Razak. Despite several reminders no reply has been recd.
We may send another reminder.

DEAF pl.

Pl. issue. Thereafter, next reminder may go *Cyber* from IV (IS II) to Addl. Solicitor General, Kolkata ^{26/6/12} with copy to Trs Advocates. *Binnaband*
27/6/12

US/ (VSA)

[Signature]

[Signature]

48

- 47

Reference note on pre page

The Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors dated 10th September, 2010 was received in the Ministry for sending Parawise comments. Parawise comments on this Supplementary Writ Petition were sent to Junior Central Government Advocate Shri G.S.Makker, Ministry of Law & Justice, Deptt. of Legal Affairs, Kolkatta on 18.2.2011. Reminders have been sent on 27.4.2011, 26.7.2011, 31.10.2011, 12.12.2011 and 26.6.2012 to expedite the Counter Affidavit to be filed by this Ministry. However, the Counter Affidavit is still awaited.

2. Director (S) has desired to send the reminder to Additional Solicitor General at the level of JS(IS-II). Since the post of Additional Solicitor General is lying vacant, ^{at Kolkatta} so we may send another reminder at the level of Director (S).

DFA please.

US(NSA)

[Signature]

[Signature]
(B.K.Rekhi)
Section Officer(Cdn)
18.10.2012

[Signature]

We may send the reminder. Also
pl. speak to the Advocate.

US(NSA)

[Signature]

Bina Pasrad
19/10/12

[Signature]

Reference note on pre page

As no reply has been received from Central Govt. Counsel. We may again send a reminder to expedite the reply as per D.F.A.

Ruchica

1/3/2013.

US (NSA)

JNCh

Fair letter for signature please.

Ruchica

1/3/2013.

US (NSA)

JNCh

BRB
1/3/13

JNCh

BRB
1/3/13

JNCh

Government of India
Ministry of Home Affairs
IS-II Division

Reference note on pre page:

Counter Supplementary Affidavit has been received from Ashish Kumar Roy, Advocate which may be seen at Fag 'Y'. The facts mentioned in the Affidavit are incongruent with the parawise comments to the Supplementary Affidavit. We may request Shri Ashish Kumar Roy to prepare Counter Affidavit on the basis parawise comments as per D.F.A

Ruchica
25/4/2013.

BK Rekhi
25/4/13
(B.K. Rekhi)
Section Officer (Cdn.)

US(NSA)

Sd/Ch

Fair letter for signature.

Ruchica
26/4/2013.

US(NSA)

Sd/Ch

BK Rekhi
26/4/13


Sd/Ch
26/4

Sub: Counter Affidavit w.r.t. Supplementary Writ
Petition No. 27541(W) of 2006 Shri Ashim Kumar
Ganguly and Anr. Vs. UOI and Ors.

The Counter Affidavit received from Advocate Shri
Ashish Kumar Roy has been gone through.

The submission made upto para 6 seems correct.
But para 7 onwards does not cover the required
information which was supplied by us vide our
parawise comments. The Counter Affidavit from para 7
and onwards may be read as at Flag 'B'.

Submitted please.


(B.K. Rekhi)
Section Officer
21.5.2013

US(NSA)

Revised Affidavit for perusal.

Ruchica

24/5/2013.

The drgr CA recd from Sh. Ashish Kumar Roy in the matter
Ashim Kumar Ganguly has been gone through & inputs given.
The drgr CA, was sent by e-mail to me. This is submitted
of the Supplementary affidavit filed by the petitioner.
Drgr CA for disposal of.

Is. discuss.

Bina Prasad
3/6/13

JS(B)

US(NSA)


24/5/13

CF-Y/c

DCY/c

From the page

Corrections have been carried out.

Draft Supplementary Affidavit submitted for approval please.

B. P. Singh
11/6/13

US (NSA)

Draft has been gone through again & examined.

Submitted for approval

J. S.

B. P. Singh
12/6/13

Birabhadra
12/6/13

US (NSA)
S. C. Singh

13/6/13

In para (b) he has referred to debates in Lok Sabha on 7.8.06 and Rajya Sabha on 24.8.2006. Actually there was no debate in both the houses. page 254 + 255/c may be seen. look file

B. P. Singh

From pre page

The Counter Affidavit has been got notarised. We may sent the Counter Affidavit to Shri S. S. Sarker, Additional Govt. Advocate for filing ⁱⁿ the Calcutta High Court.

D.F.A Please.

Ruchica
21/6/2013.

Rekhi
21/6/13

VS (NSA) on leave

DS (Legal)

J
21/6/2013

So (Cdmr)

Ref. FR.

Superintendent (Legal), Deptt. of
Legal Affairs, Branch Secretariat Kolkata
has sent back the notarised Counter
Affidavit requesting to send the affidavit
in green demi paper as per Calcutta
High Court Rules and Procedure.

Counter Affidavit on green
demi paper is placed on file for
signature and notarisation.

USC(NSA)

BK Bhatti
22/7/13

[Signature]

[Signature]
23/7/13

Ref. note above.

We may send the notarised Counter
Affidavit alongwith three photo copies
to Supt- (Legal), Branch Sectt. Kolkata
as per DFA

USC(NSA)

BK Bhatti
27/7/13

[Signature]

[Signature]

Ref. FR

This is the Judgement delivered by Hon'ble Justice Ashim Kumar Banerjee and Hon'ble Justice Dr. Mrinal Kant Chaudhuri dated 19.08.2013 disposing all the three Writ Petitions No. 27541 (W) 2006, W.P. No. 2003 of 2006 Shri Rudra Syoti Bhattacharjee & others W.P. No. 8215 (W) of 2008 of Subhas Chandre Bose. No action

now part. The file may be closed

BKbhi
24/4/14

US (NSA)

US

clear copy placed on file please.

US (NSA)

BKbhi
28/4/14

Pl. take out another copy of the judgement. The R.H.S. is not clear.

25/4/14

W (NSA)

US

US

US (NSA)

Bensherad
29/4/14

US
29/4/14

**LIST OF LAW OFFICERS
(AS ON 29.08.2012)**

SL. NO.	NAME/DESIGNATION S/SHRI	ADDRESS	DATE OF APPOINTMENT/RE-APPOINTMENT	DATE OF EXPIRY OF TERM
1.	GOOLAM E. VAHANVATI ATTORNEY GENERAL FOR INDIA	10, MOTI LAL NEHRU MARG, NEW DELHI-110 011. TEL.23383254(O), 23018122(R).FAX: 23782101(O), 23061027(R), EMAIL: GOOLAMEV@VSNL.NET. 15/16, "JOYEDEN", MOREWEATHER ROAD, MUMBAI-400 039. TEL.2835354, 22045197, 2043754, FAX: 9122-2840340(R), 2652287, 2655849, FAX: 9122-2656487(CH).	08.06.2012	07.06.2014
2.	ROHINTON F. NARIMAN SOLICITOR GENERAL OF INDIA	3, KRISHNA MENON MARG, NEW DELHI-110017. TEL. 011-23017180 FAX. 011-23017118	27.07.2011	26.07.2014
3.	MOHAN PARASARAN ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	R-20, GREATER KAILASH PART-I, NEW DELHI-110 048. TEL.26224319, 26224765, FAX: 26478228. MOBILE: 9899836567. EMAIL: SRIRANGA@VSNL.COM SHRIRANGA@ETH.NET.	05.07.2012	04.07.2014
4.	P.P. MALHOTRA ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	21, UDAY PARK, NEW DELHI-110 049. TEL.26969333, 26565722, 26515333 (R), 23386368(CH), FAX: 26865222. EMAIL: PPMANDCO@DEL3.VSNL.NET.IN.	05.07.2012	04.07.2014
5.	MS. INDIRA JAISING ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	1-54, 1ST FLOOR, NIZAMUDDIN EAST, NEW DELHI-110 013. 9999843714(M)	06.07.2012	05.07.2014
6.	MOHAN JAIN ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	AB-14, MATHURA ROAD, (OPP. GATE # 5, PRAGATI MAIDAN), NEW DELHI- 110 001. TEL.23386258(R), 23386587 (O). 9871071320(M). C-623, NEW FRIENDS COLONY, NEW DELHI. 9872611189(M). KOTHI # 1132, SECTOR 21B, CHANDIGARH. TEL.0172-2704802, 2702388, FAX:	05.07.2012	04.07.2014



IRCTCs e-Ticketing Service Electronic Reservation Slip (Personal User)



- This ticket will only be valid along with an ID proof in original. If found travelling without ID Proof, Passenger will be treated as without ticket and charged as per extant Railway rules.
- Valid IDs to be presented during train journey by one of the passenger booked on an e-ticket :- Voter Identity Card / Passport / PAN Card / Driving License / Photo ID card issued by Central/State Govt./ Student Identity Card with photograph issued by recognized School or College for their students / Nationalized Bank Passbook with photograph / Credit Cards issued by Banks with laminated photograph / Unique Identification Card "Aadhaar".
- General rules/ Information for e-ticket passenger have to be studied by the customer for cancellation & refund.

PNR No: 8560422094	Train No. & Name: 12010/SHATABDI EXP	Quota: General
Transaction ID: 0576112780	Date of Booking: 11-Oct-2012 05:00:38 PM	Class: CC
From: AHMEDABAD JN(ADI)	Date of Journey: 15-Oct-2012	To: MUMBAI CENTRAL(BCT)
Boarding: AHMEDABAD JN(ADI)	Date of Boarding: 15-Oct-2012	Scheduled Departure: 14:30 *
Resv Upto: MUMBAI CENTRAL(BCT)	Scheduled Arrival: 15-Oct-2012 21:35 *	Adult: 03 Child: 00
Passenger Mobile Number: 9818122971		Distance: 0491 KM
Passenger Address :- B 27 UNIT NO 4, KAILASH COLONY, NEW DELHI New Delhi Delhi - 110048		

FARE DETAILS :


S.No.	Description	Amount (In rupees)	Amount (In words)
1	Ticket Fare **	Rs. 1255	Rupees One Thousand Two Hundred and Fifty Five Only
2	IRCTC Service Charges	Rs. 20	Rupees Twenty Only
3	Total	Rs. 1275	Rupees One Thousand Two Hundred and Seventy Five Only

** Inclusive of Service Tax - Rs 45 Only

PASSENGER DETAILS :

S.No.	Name	Age	Sex	Concession Code	Booking Status/ Current Status/Coach No./Seat No
1	DR V G GAWAI	77	Male	SRCTZN	CONFIRM C13/ 0010/ WS
2	SEEMABEN GAWAI	69	Female	SRCTNW	CONFIRM C13/ 0011/
3	VINOD B DHOKE	65	Male	SRCTZN	CONFIRM C13/ 0012/

This ticket is booked on a personal user ID and cannot be sold by an agent. If bought from an agent by any individual, it is at his/her own risk.



Now Book Flight with IRCTC at unbeatable Prices

Hurry! Book your Flight Today

- Lowest Price
- Quick Cancellation & Quick Refunds
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- Transparent Charges
- 24x7 Customer Care
- Lowest Cancellation Charges
- Most Bank Debit cards Accepted
- Lowest Bank Charges

IMPORTANT:

- For details, rules and terms & conditions of E-Ticketing services, please visit www.irctc.co.in.
- *New Time Table is effective from 01-07-2012. Departure time and Arrival Time printed on this ERS/VRM is liable to change. Please Check correct departure, arrival from Railway Station Enquiry, Dial 139 or SMS RAIL to 139.
- The accommodation booked is not transferable and is valid only if one of the ID card noted above is presented during the journey. The ERS/VRM/SMS sent by IRCTC along with the valid ID proof in original would be verified by TTE with the name and PNR on the chart. If the passenger fail to produce/display ERS/VRM/SMS sent by IRCTC due to any eventuality (loss, damaged mobile/laptop etc.) but has the prescribed original proof of identity, a penalty of Rs.50/- per ticket as applicable to such cases will be levied. The ticket checking staff On board/Off board will give Excess Fare Ticket for the same.
- E-ticket cancellations are permitted through www.irctc.co.in by the user.
- Obtain certificate from the TTE / Conductor in case of PARTIALLY waitlisted e-ticket, LESS NO. OF PASSENGERS travelled, A.C.FAILURE, TRAVEL IN LOWER CLASS. This original certificate must be sent to GGM (IT), IRCTC Ltd., Internet Ticketing Centre, IRCA Building, State Entry Road, New Delhi-110055 after filing on-line refund request for claiming refund.
- Passengers are advised not to carry inflammable/dangerous/explosive articles as part of their luggage and also to desist from smoking in the trains.
- Contact us on: - 24*7 Hrs Customer Support at 011-39340000 , Chennai Customer Care 044 - 25300000 or Mail To: care@irctc.co.in.

		2723147		
7.	GOURAB BANERJI ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	19, MAHARANI BAGH, NEW DELHI-110 065. 9810064433(M). AB-19, TILAK MARG, NEW DELHI-110 001. TEL.23386204(O). LAW OFFICERS CHAMBER # 23, SUPREME COURT OF INDIA, NEW DELHI-110 001. TEL.23074158.	05.07.2012	04.07.2014
8.	HARIN P RAVAL ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	AB-21, TILAK MARG, NEW DELHI-110001 PH:23074450 9811795780(M).	05.07.2012	04.07.2014
9.	SIDHARTH LUTHRA ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	C-2,DEFENCE COLONY(IIND FLOOR), NEW DELHI-110024. PH:24331255,24332378,41550291 9899110966(M)	06.07.2012	05.07.2014
10.	AMARJIT SINGH CHANDHIK ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	C-524, DEFENCE COLONY, NEW DELHI-110 024. TEL.24339071-74, FAX: 24339075.	06.07.2012	05.07.2014
11.	SHRI PARAS KUHAD ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	B-4/15, 3 RD FLOOR, VASANT VIHAR, NEW DELHI-57, PH: 011-46544186/87 (R), 46562727(O), 9818550060,9829050060.	29.08.2012	28.08.2014
12..	SH. RAKESH KUMAR KHANNA ADDITIONAL SOLICITOR GENERAL, (SUPREME COURT)	A2/21-22, AZAD APARTMENTS, SRI ARBINDO MARG, HAUZ KHAS, I.I.T. GATE, NEW DELHI, PH: 26561827(R), 23350590,23739658, 9810021863.	29.08.2012	28.08.2014
13.	SH. G.MASILAMANI ADDITIONAL SOLICITOR GENERAL, (MADRAS HIGH COURT)	NEW NO. 24(OLD NO. 42), Y-BLOCK, 9 TH STREET, ANNA NAGAR, CHENNAI-600040, PH: 044-26214201 (R), 044-26287179,26280052.	29.08.2012	28.08.2014
14.	SH. P.WILSON ADDITIONAL SOLICITOR GENERAL, (MADRAS HIGH COURT)	10, RAILWAY COLONY, 4 TH CROSS STREET, (OFF) NELSON MANICKAM ROAD, CHENNAI-600021, PH: 23741600, 23743900(R), 25332400, 9841047853.	29.08.2012	28.08.2014



IRCTCs e-Ticketing Service Electronic Reservation Slip (Personal User)



- This ticket will only be valid along with an ID proof in original. If found travelling without ID Proof, Passenger will be treated as without ticket and charged as per extant Railway rules.
- Valid IDs to be presented during train journey by one of the passenger booked on an e-ticket :- Voter Identity Card / Passport / PAN Card / Driving License / Photo ID card issued by Central/State Govt./ Student Identity Card with photograph issued by recognized School or College for their students / Nationalized Bank Passbook with photograph / Credit Cards issued by Banks with laminated photograph / Unique Identification Card "Aadhaar".
- General rules/ Information for e-ticket passenger have to be studied by the customer for cancellation & refund.

PNR No: 8206935178	Train No. & Name: 12931/ADI DOUBLE DECK	Quota: General
Transaction ID: 0576122097	Date of Booking: 11-Oct-2012 05:15:18 PM	Class: CC
From: MUMBAI CENTRAL(BCT)	Date of Journey: 19-Oct-2012	To: AHMEDABAD JN(ADI)
Boarding: MUMBAI CENTRAL(BCT)	Date of Boarding: 19-Oct-2012	Scheduled Departure: 14:20 *
Resv Upto: AHMEDABAD JN(ADI)	Scheduled Arrival: 19-Oct-2012 21:40 *	Adult: 03 Child: 00
Passenger Mobile Number: 9818122971		Distance: 0491 KM
Passenger Address :- B 27 UNIT NO 4,KAILASH COLONY,NEW DELHI New Delhi Delhi - 110048		

FARE DETAILS :

S.No.	Description	Amount (In rupees)	Amount (In words)
1	Ticket Fare **	Rs. 933	Rupees Nine Hundred and Thirty Three Only
2	IRCTC Service Charges	Rs. 20	Rupees Twenty Only
3	Total	Rs. 953	Rupees Nine Hundred and Fifty Three Only

** Inclusive of Service Tax - Rs 34 Only

PASSENGER DETAILS :

SNo.	Name	Age	Sex	Concession Code	Booking Status/ Current Status/Coach No./Seat No
1	DR V G GAWAI	77	Male	SRCTZN	CONFIRM C10L/ 0001/ WS
2	SEEMABEN GAWAI	69	Female	SRCTNW	CONFIRM C10L/ 0002/
3	VINOD B DHOKE	65	Male	SRCTZN	CONFIRM C10L/ 0003/

This ticket is booked on a personal user ID and cannot be sold by an agent. If bought from an agent by any individual, it is at his/her own risk.



Hurry! Book your Flight Today

- Lowest Price
- Quick Cancellation & Quick Refunds
- Amazing Deals
- Transparent Charges
- 24x7 Customer Care
- Lowest Cancellation Charges
- Most Bank Debit cards Accepted
- Lowest Bank Charges

IMPORTANT:

- For details, rules and terms & conditions of E-Ticketing services, please visit www.irctc.co.in.
- *New Time Table is effective from 01-07-2012. Departure time and Arrival Time printed on this ERS/VRM is liable to change. Please Check correct departure, arrival from Railway Station Enquiry, Dial 139 or SMS RAIL to 139.
- The accommodation booked is not transferable and is valid only if one of the ID card noted above is presented during the journey. The ERS/VRM/SMS sent by IRCTC along with the valid ID proof in original would be verified by TTE with the name and PNR on the chart. If the passenger fail to produce/display ERS/VRM/SMS sent by IRCTC due to any eventuality (loss, damaged mobile/laptop etc.) but has the prescribed original proof of identity, a penalty of Rs.50/- per ticket as applicable to such cases will be levied. The ticket checking staff On board/Off board will give Excess Fare Ticket for the same.
- E-ticket cancellations are permitted through www.irctc.co.in by the user.
- Obtain certificate from the TTE / Conductor in case of PARTIALLY waitlisted e-ticket, LESS NO. OF PASSENGERS travelled, A.C.FAILURE, TRAVEL IN LOWER CLASS. This original certificate must be sent to GGM (IT), IRCTC Ltd., Internet Ticketing Centre, IRCA Building, State Entry Road, New Delhi-110055 after filing on-line refund request for claiming refund.
- Passengers are advised not to carry inflammable/dangerous/explosive articles as part of their luggage and also to desist from smoking in the trains.
- Contact us on: - 24*7 Hrs Customer Support at 011-39340000 , Chennai Customer Care 044 - 25300000 or Mail To: care@irctc.co.in.

15.	KEVIC SETALVAD ADDITIONAL SOLICITOR GENERAL, (BOMBAY HIGH COURT)	401 SAVLA CHAMBERS, CAWASJI PATEL STREET FORT, MUMBAI- 400001 PH:	06.07.2012	05.07.2014
16.	RAJEEVE MEHRA ADDITIONAL SOLICITOR GENERAL, (DELHI HIGH COURT)	B-57, DEFENCE COLONY, NEW DELHI-110 024. TEL.41553905/6/7/8/9 9810014739(M)	06.07.2012	05.07.2014
17.	BISHWAJIT BHATTACHARYA ADDITIONAL SOLICITOR GENERAL (INDIRECT TAXES) (SUPREME COURT)	H-1559, CHITTARANJAN PARK, NEW DELHI-110 049. TEL.26279292, 26276783, 26279946, 40532788, 41604858(R), FAX: 23782595, 9810010643, 9810026600(M).	10.11.2009	09.11.2012
18.	MAHENDRA SINGH SINGHVI ADDITIONAL SOLICITOR GENERAL (RAJASTHAN HIGH COURT, JODHPUR)	97,98 UMAID HERITAGE,DEFENCE LAB ROAD,JODHPUR- 342011.PH:09414129187, 0291 2510187,2515046(FAX).	29.08.2012	28.08.2014
19.	----- ADDITIONAL SOLICITOR GENERAL, (ALLAHABAD HIGH COURT)	VACANT		
20.	----- ADDITIONAL SOLICITOR GENERAL, (CALCUTTA HIGH COURT)	VACANT		

OF CARRIAGE, WHICH ARE HEREBY INCORPORATED BY REFERENCE. THESE CONDITIONS MAY BE OBTAINED FROM THE ISSUING CARRIER.

THE ITINERARY/RECEIPT CONSTITUTES THE PASSENGER TICKET FOR THE PURPOSES OF ARTICLE 3 OF THE WARSAW CONVENTION, EXCEPT WHERE THE CARRIER DELIVERS TO THE PASSENGER ANOTHER DOCUMENT COMPLYING WITH THE REQUIREMENTS OF ARTICLE 3.

PASSENGERS ON A JOURNEY INVOLVING AN ULTIMATE DESTINATION OR A STOP IN A COUNTRY OTHER THAN THE COUNTRY OF DEPARTURE ARE ADVISED THAT INTERNATIONAL TREATIES KNOWN AS THE MONTREAL CONVENTION, OR ITS PREDECESSOR, THE WARSAW CONVENTION, INCLUDING ITS AMENDMENTS (THE WARSAW CONVENTION SYSTEM), MAY APPLY TO THE ENTIRE JOURNEY, INCLUDING ANY PORTION THEREOF WITHIN A COUNTRY. FOR SUCH PASSENGERS, THE APPLICABLE TREATY, INCLUDING SPECIAL CONTRACTS OF CARRIAGE EMBODIED IN ANY APPLICABLE TARIFFS, GOVERNS AND MAY LIMIT THE LIABILITY OF THE CARRIER. THESE CONVENTIONS GOVERN AND MAY LIMIT THE LIABILITY OF AIR CARRIERS FOR DEATH OR BODILY INJURY OR LOSS OF OR DAMAGE TO BAGGAGE, AND FOR DELAY.

9 approved by JS (15-70)
-X-

Para-wise comments of Ministry of Home Affairs on the supplementary affidavit filed by Shri Ashim Kumar Ganguly on writ petition No. 27541 of 2006 and others Vs. Union of India

1. Averments made in para-1 need no comments.
2. Averments made in para-2 need no comments.
3. Averments made in para-3 need no comments as these are matter of record.
4. With regard to averment made in Para 4, 5 and 6 of Writ Petition, it is a matter of record, however, following is again submitted for the sake of clarification:-
 - (A) On the question of alleged disappearance of Netaji Subhas Chandra Bose, the Government of India has, so far, appointed three Committees / Commissions so far. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.
 - (B) The second inquiry was made by appointing a one-man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974. This Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

8

(C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order/ judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

(D) Therefore, the Government of India appointed a Commission headed by Justice (Retd.) M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

9

-3-

(E) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

S.No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

“5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged”.

(F) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of

"clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

(G) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that:-

Netaji did not die in the plane crash; and

The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956".

W

- 506

(H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 6 months, it could not find any proof that Netaji Subhas Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/ findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to averment made in Para 7(i) & (ii) of Writ Petition, it is submitted that the Government of India is not spending money ^{from public funds} to ^{for} maintain ^{ance of} the ashes kept in the Renkoji Temple, Tokyo, Japan.

6. With regard to averment made in Para 7 (iii) of the Supplementary Writ Petition, the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of

Netaji. The Netaji Research Bureau an institute of History, Politics and international relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau. and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that the statements made in Para-7(iii) of Supplementary Writ Petition is rejected outright.

7. With regard to averment made in Para 7 (iv) of Writ Petition it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokya does not arise.

8. With regard to averment made in Para 8 and 9 of Writ Petition, it is stated that regarding the news item which appeared in "Pune Times" on 18th August, 2010 Union of India has not received any such request from any organization and has not given any clearance in this regard. The fact has also been ascertained from Indian Mission in Tokyo who have conveyed that the article is far fetched and not based on facts.

9. Averment made in Para 10 and 11 need no comments.

① ^{approved} ~~cleared~~ any proposal for bringing the ashes of Netaji Subash Chandra Bose back to India. are M. E. A has ^{further} conveyed that they ~~have~~ ^{are} ~~in~~ not knowledge of any such proposal which has been presented to Indian Emb in Tokyo and M E A has ^{also} commented that the news items referred to in para 8 & 9 of the writ. are speculations

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13
50 No. 1 (R)
24 No 2342/JS (2107)
17/4/07

Court Matter

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantrayala

ISC DN 1002

Jaisalmer House, Mansingh Road
New Delhi - 110 011.

Subject : Letter dtd.19.01.2007 in W.P. No.27541 of 2006 - Ashim Kr.Ganguly & Anr. Vs. UOI.

Letter dated 19.01.2007(received in this Division 11.4.2007) received from Shri G.S. Makker, Jr.CGA, Ministry of Law & Justice, Kolkatta, forwarding therewith copy of letter dtd.8.1.2007 from Govt.Counsel Sri Tarun Kr.Ghosh, Advocate is the concern of the **I.S. Division**. They may please take over the receipt for further necessary action.

2. The above mentioned order has not been acknowledged.

Encl : As above.

S. H. T.
(Santha Thampi)
Under Secretary to the Govt. of India
Tel.No.23381509

Internal Security Division
[Shri L.C. Goel, Joint Secretary]
North Block, New Delhi.

MHA I.D. No.23/7/2007(Vol.I)[Dy.No.394]-Judl. & P.P. dated April, 17/2007.

17/4
DS (Legal)

US (Arms)

The Matter relates to Renkoji Temple
i.e. Netaji Subhash Chandra Bose -
Please write to Adv. T.K. Bose
That we have not received
copy of petition etc. Also fwd. a
copy to MHA. If you like you may
discuss.

(L)
For your info, Amrcl
23/4

18/4/07

US (Arms)

No such case is pending in cdn sec.
Key pl sec.

24/4/07

28(A)

US (L)

DS (Legal)

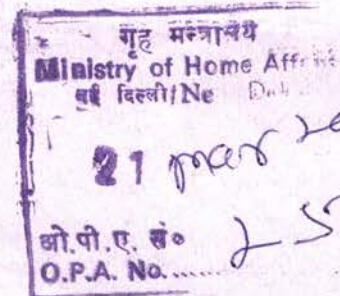
Not for legal cell. 23/4/07
Amrcl
23/4/07

No. 1204/Home/06-III 1548/1673
Ministry of Law & Justice
11, Strand Road. Kolkata-1.

Date :- 19.1.07

To
The Secretary
Ministry of Home Affairs
North Block
New Delhi.

Sub:- WP No. 27541(W) of 06
Ashim Kr. Ganguly & Anr.
-Vs-
U.O.I. & Ors.



Sir,

Enclosed please find herewith a copy of letter dt. 8.1.07 as received from our panel counsel Sri Tarun Kr. Ghosh, Advocate which speaks for itself.

You are requested to depute one conversant officer alongwith necessary instruction to meet our panel counsel to do the needful.

Encl: As above.

Yours faithfully,

G.S. Makker |
Jr.CGA

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail : barasohc@calcmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M.

By Hand
Through Special Messenger

The 08th January, 2007.

To

The Additional Government Counsel
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
4, Kiron Shankar Roy Road,
Kolkata - 700 001.

Your Ref. File No. 1204/Home/06/III dt. 21.12.06.

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr. Petitioners.

-Vs-

Union of India & Ors. Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Dear Sir,

This is to inform you that the above writ petition was listed in the cause list dated 22.12.2006 of Their Lordships The Hon'ble Mr. V. S. Sirpurkar and The Hon'ble Justice Arun Kumar Mitra and placed for hearing on 22.12.2006 when I appeared on your behalf. The matter was heard and after hearing the Ld. Advocates for the respective parties Their Lordships directed to be placed the matter again for hearing after ensuing x-mass vacation. Accordingly, the matter was again listed in the cause list dated 05.01.2007 of Their Lordships and placed for hearing on 05.01.2007 itself when I appeared on your behalf before Their Lordships. The matter was heard at length and after hearing the Ld. Advocates for the respective parties Their Lordships were pleased to direct to file the affidavit-in-opposition in the matter within 3(three) weeks from the date.

It is pertinent to mention here that the subject matter of the above writ petition, inter alia,

"Prohibition forbearing the Respondents nos. 1 to 4 from incurring any amount of public money from public Exchequer for preservation and reservation and/or maintenance of Henkoji Temple, Japan allegedly keeping the ashes of Netaji allegedly died on 18.08.1945 till the disposal of this writ petition."

Printed.....P/7

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail: barasohc@cal.cmc.net.in

:: 2 ::

Chamber : 2350-9128 & 2351-2

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M.

The 08th January, 2007.

In this context, it is therefore requested you to kindly arrange to furnish brief history along with parawise comments to the writ petition immediately so that I can prepare affidavit-in-opposition on your behalf and the said opposition be affirmed by the competent official of the concerned department after vetting the same in time in compliance with the order of this Hon'ble Court in the matter.

Please do the needful.


Thanking You.

Copy to :

1. The Principal Secretary,
Office of the Prime Minister, Govt. of India,
7, Race Course Road, New Delhi.
2. The Director,
Netaji Research Bureau,
38/2, Lala Lajpat Roy Road, Kol-20.

For information and necessary action.

Yours faithfully,



(TARUN KUMAR GHOSH)

Advocate.

08/01/2007

Regd with A/D Post

18
Sr No. 2 (F)

Shed Post

Pl. issue
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LSD
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**No. 12014/12/2007-Coordination
Government of India
Ministry of Home Affairs
Internal Security Division**

**9th Floor, C Wing,
Lok Nayak Bhawan, New Delhi
Dated 24th April, 2007.**

To

26 APR 2007

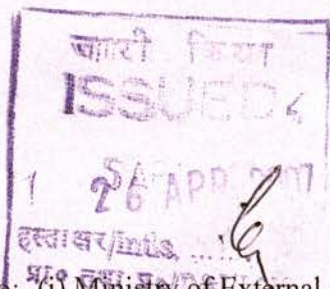
Shri G.S.Makkar,
Jr. CGA,
Ministry of Law and Justice,
11 Strand Road,
Kolkata-1.

Subject: W.P.No. 27541 of 2006- Ashim Kr. Ganguly & Anr. Vs. UOI

Sir,

I am directed to refer to your letter No. 1204/Home/06-III/548/1673 dated 19.1.07 enclosing a copy of letter dated 8.1.07 from the panel counsel Shri Tarun Kr. Ghosh, Advocate, in connection with incurring of public money from Public Exchequer for preservation and reservation and/ or maintenance of Renkoji Temple, Japan allegedly keeping the ashes of Netaji Subhash Chandra Bose.

Apparently the subject matter pertains to Ministry of External Affairs. However this Ministry has not received copy of the W.P.No. 27541 of 2006- Ashim Kr. Ganguly & Anr. Vs. UOI nor any other communication in this regard. It is requested to send a copy of the Writ Petition to us, of Ministry of Home Affairs has also been made respondent. This may please be treated as urgent.



2 Sng
25/4/07

(S.K.Goswami)

Under Secretary to the Government of India

Copy to:- (i) Ministry of External Affairs (Shri Debnath Shaw, Joint Secretary (CNV), South Block alongwith a copy of the letter No. . 1204/Home/06-III/548/1673 dated 19.1.07 received from Ministry of Law and Justice, Kolkata, with enclosures.

PR 100 4/06

sheel/bast

(ii) Shri Tarun Kumar Ghosh, 10-A, Dr. Kartick Bose Street, 1st Floor, Kolkata
-700009

/c 25/4/07
(S.K.Goswami)

Under Secretary to the Government of India

20

1 26
-12-

**No. 12014/12/2007-Coordination
Government of India
Ministry of Home Affairs
Internal Security Division**

**9th Floor, C Wing,
Lok Nayak Bhawan, New Delhi
Dated 24th April, 2007.**

To

Shri G.S.Makkar,
Jr. CGA,
Ministry of Law and Justice,
11 Strand Road,
Kolkata-1.

Subject: W.P.No. 27541 of 2006- Ashim Kr. Ganguly & Anr. Vs. UOI

Sir,

I am directed to refer to your letter No. 1204/Home/06-III/548/1673 dated 19.1.07 enclosing a copy of letter dated 8.1.07 ~~received~~ from the panel counsel Shri Tarun Kr. Ghosh, Advocate, ^{in 4/07} regarding incurring ~~any~~ amount of public money from Public Exchequer for preservation and reservation and/ or maintenance of Renkoji Temple, Japan allegedly keeping the ashes of Netaji Subhash Chandra Bose.

Apparently,

However,

Know any other communication in this regard?
The subject matter pertains to Ministry of External Affairs. This Ministry has not received W.P.No. 27541 of 2006- Ashim Kr. Ganguly & Anr. Vs. UOI. It is requested to intimate as to whom the above said Writ Petition has been sent.

(not Renkoji Temple as stated in letter dt. 8.1.07)

*This may please
yours faithfully,*

Send a copy of the Writ Petition to us, if

M/o Home Affairs

(S.K.Goswami)
Under Secretary to the Government of India

has also been made a respondent.

*Copy to :- (1) M/o External Affairs [Shri — — — — — Jr. Secy]
alongwith a copy of the letter dt. No. 1204/Home/06-III/548/1673 dt. 19.1.07 received from
M/o Law & Justice, Kolkata, with enclosures.
(2) Shri Tarun Kumar Ghosh, 10-A, Dr. Kartick Bose
Street, 1st Fl, Kolkata-750 009.*

21
20 No 3 (R)

Government of India
Ministry of External Affairs
CNV Division

New Delhi, the 4th May, 2007
7/5.

Subject: W.P. No. 2741 of 2006 -- Ashim Kr. Ganguly & Anr. Vs. UOI

Ministry of Home Affairs, Internal Security Division may please refer to their letter no. 12014/12/2007-Coordination dated 24th April 2007 addressed to Ministry of Law and Justice, Kolkatta and copy endorsed to this Ministry on the above subject.

2. In this connection, it is intimated that the Ministry of Home Affairs is the nodal Ministry which has been handling matters pertaining to Netaji Subhash Chandra Bose and not the Ministry of External Affairs as stated in the above said communication. The Ministry of External Affairs has been providing information in this regard as and when required.

3. It is also intimated that this Ministry has not received a copy of the above said writ petition nor any other communication relating to it in the past. In the absence of the availability of copy of the writ petition, it is not sure if this Ministry has been listed as one of the respondents. However, it is requested that a copy of the writ petition may please be made available to this Ministry for information and necessary action, if any, required at this end.

D. Shaw

(Debnath Shaw)
Joint Secretary (CNV) & CVO

MHA, Internal Security Division (Shri L.C. Goel, JS), North Block, New Delhi.
MEA U.O. No. 25/4/NGO-XVI

us (A)
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Shri
11/5/07

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SO (Cdr)

22
S.No. 4 (I)
No.12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security Division

By Speed Post (S)
- R

Ref.
D-1
15/5/07

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt. 14.5.07

To

Shri G.S. Makkar,
Jr. CGA,
Ministry of Law and Justice,
11 Strand Road,
Kolkata-1.

15 MAY 2007

Subject: W.P.No.27541 of 2006 – Ashim Kr. Ganguly & Anr. Vs. UOI.

Sir,

I am directed to refer to this Ministry's letter of even number dated 26th April 2007 (copy enclosed). It is requested to send the copy of the Writ Petition urgently to this Ministry for taking further necessary action in the matter.

Sug
15/5/07
(S.K. Goswami)
Under Secretary

P.B. 15/5/07
Copy to:- Ministry of External Affairs(Shri Debnath Shaw, Joint Secretary(CNV), South Block.



Sug
15/5/07
(S.K. Goswami)
Under Secretary
ok

Sr. No. 5 (R) ²³

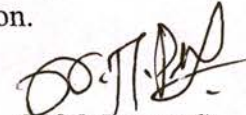
Court Matter
MOST IMMEDIATE

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantrayala

Jaisalmer House, Mansingh Road
New Delhi - 110 011.

Subject : W.P. No.27541 of 2006 - Ashim Kr. Ganguly Vs. UOI & Ors.

In continuation to this Division's I.D. Note No.394/Court/2007-Judl & PP dated 17.4.2007, please find enclosed herewith letter dated 30.7.2007 received from Shri A. Bhattacharyya, Addl. Govt. Counsel regarding furnishing of parawise comments and brief history of the case to him on the aforesaid subject is the concern of [IS Division, MHA]. They may please take over the receipt for further necessary action.



(N.M. Perumal)
Director (Judl)
Tel.No.23074185

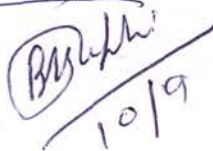
IS Division, MHA
[Shri L.C. Goel, Joint Secretary]
North Block, New Delhi.

MHA I.D. No.23/7/2007(Vol.I)([Dy.No.919]-Judl. & P.P. dated 24 August, 2007

IS (IS) has been apprised. Sh. T.K. Abock, Adv., has been requested to send the copy of petition. Pl. open a file and await the copy for taking further n.a.

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Ser No. 6 LR) 24
F.No.1204/Home//06-III/ 1820 234

Govt. of India

Ministry of Law and Justice

Deptt of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor, Kolkata-700 001

Dated the 30th July, 2007

To

The Under Secretary to the Govt. of India,
Ministry of Home Affairs, North Block,
NEW DELHI - 110 001



Sub: W.P.NO.27541 (W) of 2006

Ashim Kumar Ganguly & Anr. -vs- Union of India & Ors.

Sir,

This is to inform you that the above Writ Petition came up before the Hon'ble V.S. Sirpurkar, Chief Justice and the Hon'ble Justice Arun Kumar Mitra on 22.12.2006 when Their Lordships were pleased to adjourn the matter till 5th January, 2007. On 5th January, 2007, the matter again came up before Their Lordships when after hearing the respective parties, Their Lordships were pleased to direct to file the Affidavit in Opposition within three weeks. The said order was communicated to you vide our letter dated 19.1.2007. Shri Tarun Kumar Ghosh, Advocate, also communicated the said order vide his letter dated 8th January, 2007 to the Ministry of Law and Justice, Branch Secretariat, Kolkata and also to the Principal Secretary, Office of the Prime Minister, Govt. of India and Director, Netaji Research Bureau, Kolkata.

The matter again appeared before The Hon'ble Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Kalyan Jyoti Sengupta on 5th June, 2007 when the Counsel for the Union of India prayed for the extension of time to file the Affidavit in Opposition, in the matter. After hearing, Their Lordships have been pleased to grant the said prayer directing to file the Affidavit in Opposition within three weeks. The said order was again communicated to you vide this office letter dated 10th June, 2007 and simultaneously the Counsel for Union of India, Shri Tarun Kumar Ghosh also communicated the said order to the Ministry of Law, Branch Secretariat, Kolkata and the Principal Secretary, Office of the Prime Minister, Govt. of India and also Director, Netaji Research Bureau, Kolkata. It was specifically mentioned by Shri Tarun Kumar Ghosh, Advocate, in his above mentioned letter that appropriate steps should be taken immediately so that opposition may be filed in compliance with the order dated 5th June,

2/5 Division
B. 19/1
5/10/06
Done
14/06

318/2007/2007/2007/2007
16/08/07

: 2 : 25

2007 for protecting the interest of Govt. of India. Inspite of such request, you have not yet furnished parawise comments and brief history of the case to this office to enable us to prepare Affidavit in Opposition for Union of India.

Please note that the time to file the Affidavit in Opposition, as granted by the Hon'ble Court, has already expired. You are, therefore, requested to take immediate necessary action to furnish parawise comments and brief history of the case to this office to enable us to draw Affidavit in Opposition and take necessary steps for filing the same before the Hon'ble Court so that interest of Govt. of India is protected.

Please treat this as most urgent.

Yours faithfully,

30/7/07

(S.Bhattacharyya)
Additional Govt. Counsel

Copy to:

1. Ms. V. Vidyavathi, Director, Prime Minister Office, Political Section, South Block, New Delhi - 110 001 - for information and necessary action.
2. Shri M.A. Khan Yusufi, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Deptt. of Legal Affairs, Shastri Bhavan, New Delhi-110 001 for information.
3. Shri R.N. Bandyopadhyay, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Branch Secretariat, Kolkata - w.e.f. his Note No. Misc/JS&GC/WN/07 Dated 16th July, 2007.
4. Shri Tarun Kumar Ghosh, Advocate, High Court Bar Association, Room No.2, Kolkata.- He is requested to pray for further time if the matter comes up for hearing.

(S.Bhattacharyya)
Additional Govt. Counsel

230/8485

26

EMS SPEED POST



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21 भारत सरकार सेवार्थ

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To
The Under Secretary
to the Govt of India

Min of Home Affairs

Despatcher

Ministry of Law & Justice
Department of Legal Affairs

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and Road, ...-700001

New Delhi - 110001

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Govt. of India

Ministry of Law and Justice

Deptt of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor, Kolkata-700 001

Dated the 30th July, 2007

To

The Under Secretary to the Govt. of India,
Ministry of Home Affairs, North Block,
NEW DELHI - 110 001

Sub: W.P.NO.27541 (W) of 2006

Ashim Kumar Ganguly & Anr. -vs- Union of India & Ors.

Sir,

This is to inform you that the above Writ Petition came up before the Hon'ble V.S. Sirpurkar, Chief Justice and the Hon'ble Justice Arun Kumar Mitra on 22.12.2006 when Their Lordships were pleased to adjourn the matter till 5th January, 2007. On 5th January, 2007, the matter again came up before Their Lordships when after hearing the respective parties, Their Lordships were pleased to direct to file the Affidavit in Opposition within three weeks. The said order was communicated to you vide our letter dated 19.1.2007. Shri Tarun Kumar Ghosh, Advocate, also communicated the said order vide his letter dated 8th January, 2007 to the Ministry of Law and Justice, Branch Secretariat, Kolkata and also to the Principal Secretary, Office of the Prime Minister, Govt. of India and Director, Netaji Research Bureau, Kolkata.

The matter again appeared before The Hon'ble Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Kalyan Jyoti Sengupta on 5th June, 2007 when the Counsel for the Union of India prayed for the extension of time to file the Affidavit in Opposition, in the matter. After hearing, Their Lordships have been pleased to grant the said prayer directing to file the Affidavit in Opposition within three weeks. The said order was again communicated to you vide this office letter dated 10th June, 2007 and simultaneously the Counsel for Union of India, Shri Tarun Kumar Ghosh also communicated the said order to the Ministry of Law, Branch Secretariat, Kolkata and the Principal Secretary, Office of the Prime Minister, Govt. of India and also Director, Netaji Research Bureau, Kolkata. It was specifically mentioned by Shri Tarun Kumar Ghosh, Advocate, in his above mentioned letter that appropriate steps should be taken immediately so that opposition may be filed in compliance with the order dated 5th June,



29
121
2007 for protecting the interest of Govt. of India. In spite of such request, you have not yet furnished parawise comments and brief history of the case to this office to enable us to prepare Affidavit in Opposition for Union of India.

Please note that the time to file the Affidavit in Opposition, as granted by the Hon'ble Court, has already expired. You are, therefore, requested to take immediate necessary action to furnish parawise comments and brief history of the case to this office to enable us to draw Affidavit in Opposition and take necessary steps for filing the same before the Hon'ble Court so that interest of Govt. of India is protected.

Please treat this as most urgent.

Yours faithfully,

(S.Bhattacharyya)
Additional Govt. Counsel

Copy to:

- ✓ 1. Ms. V. Vidyavathi, Director, Prime Minister Office, Political Section, South Block, New Delhi - 110 001 - for information and necessary action.
2. Shri M.A. Khan Yusufi, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Deptt. of Legal Affairs, Shastri Bhavan, New Delhi-110 001 for information.
3. Shri R.N. Bandyopadhyay, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Branch Secretariat, Kolkata - w.e.f. his Note No.Misc/JS&GC/WN/07 Dated 16th July, 2007.
4. Shri Tarun Kumar Ghosh, Advocate, High Court Bar Association, Room No.2, Kolkata.- He is requested to pray for further time if the matter comes up for hearing.

8030740-
(S.Bhattacharyya)
Additional Govt. Counsel

28/08/07 15:25

FAX 913322485215

30
Sr No 8(R)
No. 1204/Home/06-III
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

20
Speed Post
114

Date :- 27.8.07

To
Sri Santha Thampi
Under Secretary to the Govt. of India
Ministry of Home Affairs
Jaisalmer House
Mansingh Road
New Delhi-110011.

Sub:-WP No. 27541(W) of 06
Sri Ashim Kr. Ganguly & Anr.
Vs-
UOI & Ors.

Sir,

Please refer to your letter No.23/7/2007-Judl.
& PP(Vo..I) dt. 20.8.2007 regarding Writ Petition
in the aforesaid matter. Enclosed please find herewith
Writ Petition No. 27541(W) of 06 aforesaid with request
to return the same after making xerox alongwith
brief history, para-wise comments and necessary instruction
to do the needful.

Supplementary affidavit
of petitioner

Encl: As above.

Yours faithfully,

(G.S. Makkar)
Jr. CGA

Mr. Tarun Kumar
Alok, ADE

9433506066

Nelaji

MoD - Military govt -
IB to be requested to
expedite

31
Sr No 9 (R)
10/12/07 NCB/07 Dy No 7572 JS (1520)
12/9 11/9/07


Court Matter
MOST IMMEDIATE

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantrayala

Jaisalmer House, Mansingh Road
New Delhi - 110 011.

Subject : W.P. No.27541 of 2006 - Ashim Kr.Ganguly Vs. UOI & Ors.

In continuation to this Division's I.D. Note Nos.394 and 919/Court/2007-Judl & PP dated 17.4.2007 and 24.8.2007 respectively, please find enclosed herewith original Writ Petition received from Shri G.S. Makker, Jr.CGA, Kolkata, with a request to keep the Xerox copy and return the original with parawise comments and brief history of the case to him on the aforesaid subject, is the concern of [IS Division, MHA]. They may please take over the receipt for further necessary action.


(N.M. Perumal)
Director (Judl)
Tel.No.23074185

✓
IS Division, MHA
[Shri L.C. Goel, Joint Secretary]
North Block, New Delhi.

MHA I.D. No.23/7/2007(Vol.I)([Dy.No.987]-Judl. & P.P. dated 11 Sept,2007

38457DS(L)/07
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11/9
DS(L)

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Pl. pr.
12/9/07

32

Speed Post 116

Sr No. 10(R)

No. 1204/Home/06-III/2106/5172
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

Date :- 27.8.07

To
Sri Santha Thampi
Under Secretary to the Govt. of India
Ministry of Home Affairs
Jaisalmer House
Mansingh Road
New Delhi-110011.

Sub:-WP No. 27541(W) of 06
Sri Ashim Kr. Ganguly & Anr.
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Sir,

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to return the same after making xerox alongwith
brief history, para-wise comments and necessary instruction
to do the needful.

Encl: As above.

Yours faithfully,

(G.S. Makker)
Jr. CGA

S
21/8

80 (Judl)

To me

A
03/09

987/contd. of 21/8/07
31/8/07

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117
DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

IN THE MATTER OF:

W.P. No. 27541 (W) of 2006.

-And-

IN THE MATTER OF:

An application under Article 226
of the Constitution of India;

-And-

IN THE MATTER OF:

SRI ASHIM KUMAR GANGULY AND ANOTHER.

..... PETITIONERS.
-VERSUS-

UNION OF INDIA AND OTHERS.

..... RESPONDENTS.

01 SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONERS,

I, SUBHASH CHANDRA BASU, Son of Late Surendra Nath Basu,
aged about 42 years, by religion Hindu, by profession - Lawyer,
residing at 86, Sadar Buxi Lane, Post Office, Police Station and
District - Howrah, Pin Code : 711101, do hereby solemnly affirm
and declare as follows:-

1. That I am the petitioner No.2 of this instant Writ Petition
as such I am well conversant with the facts and circumstances of
this case.

Contd...2

2. That the petitioners filed this Writ Petition based on some laws and Factual aspects relating to earlier and present facts or events, which were adequately pleaded in the Writ Petition filed by the petitioners ^{concerning to stop} ~~relating to stopping~~ of all expenditures for alleged maintenance and upkeeping the Renkoji Temple in Japan, where the alleged ashes of Netaji Subhas Chandra Bose allegedly claimed to have been kept. The petitioners inadvertently and for some other unavoidable reasons failed to annex those documents on the said factual aspect but the same are required to be enclosed for proper adjudication or arrive at final conclusion and/or better appraisal ^{of} factual aspect. Hence, the relevant documents are enclosed and/or relevant portion of some statements are quoted in the succeeding Paragraphs. It is further stated that by enclosing those documents or quoting some portion of the statement the petitioners do not want to change the earlier pleading or averments ~~rather~~ and thus, such enclosures or portion of the statements are required to support or supplement the earlier averments of pleadings and those are also for the ends of justice.

3. ~~That~~ With reference to Paragraph No.2 and 3 of this Writ Petition the petitioners have made the averments that the Petitioner No.1 on the earlier occasion had filed a Writ Petition being W.P. No. 1805 of 1997 in this Hon'ble High Court challenging

the Government's arbitrary decision for bringing the alleged ashes of Netaji Subhash Chandra Bose from Renkoji Temple, Japan to our country and further sought for restraining the Government from taking such step unless satisfied about the genuineness of claim that the ashes kept at the Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and unless to take the people of India in confidence.

The xerox copy of the order dated 07.04.1998, which speaks for itself, passed in W.P. No. 1805 of 1997 by the Hon'ble Justice Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice Barin Ghosh as their Lordship then were, is enclosed herewith and marked as Annexure - P/5.

4. With reference to averments made in Paragraph No.3 of this Writ Petition, the petitioners referred another Writ Petition being W.P. No. 281 of 1998, which was also decided on 30.04.1998 and it was reported in AIR 1999 Cal 9 (Rudra Jyoti Bhattacharjee - Versus- Union of India). The petitioner crave leave to refer the order dated 30.04.1998 ^{which is} and reported in AIR 1999 Cal 9 and want to produce the said reported judgment at the time of hearing.

5. With reference to averments made in Paragraph No.4 of the Writ Petition, the petitioners want to rely and refer the contention of appointment of Mukherjee Commission referred to as

Annexure - p/2 to the Writ Petition.

6. With reference to averments made in Paragraph No.5 of this Writ Petition concerning the Writ Petition, being Transfer Case (C) No. 7 of 1994 challenging therein the conferment of posthumous Bharat Ratna Award on Netaji Subhas Chandra Bose, the petitioners want to refer and rely upon the Judgment and Order of the Hon'ble Supreme Court of India in the said Writ Petition reported in the AIR 1997 SC 3019 (Union of India -Versus- Bijan Ghosh) at the time of hearing.

7. With reference to averments made in Paragraph No. 6 and 7 of this Writ Petition, ^{want to refer and rely upon the} the petitioners ^{of} "Conclusion", Chapter Five, at Page No. 123 of the Mukherjee Commission Report submitted on 08.11.2005 before the Government of India, ^{which} is enclosed herewith and marked as Annexure - P/6.

8. With reference to averments made in Paragraph No.8 of this Writ Petition, the petitioners state that though they have earlier adequately pleaded as to ~~the~~ holding of Shri Shaw Nawaz Committee and Khosla Commission, now the petitioners further want to refer and rely upon, Chapter One, Preamble, Page 1 and 2 of ~~the~~ ^{dated 08.11.2005} the Mukherjee Commission Report, relating to earlier appointment of a three-member Inquiry Committee vide reference ~~MaxEn20/24/22~~ No. F-30(26) FEA/56 dated April 5, 1956 headed by Shri Shaw Nawaz

of Khan as Chairman and the Inquiry Commission was constituted vide Notification No. 25/14/70-Poll.11 dated July 11, 1970 headed by Shri G.D.Khosla, retired Chief Justice of Punjab High Court, which were asked to inquire into the facts relating to disappearance of Netaji Subhas Chandra Bose and the Committee ^{report wherein} ~~except~~ Suresh Chandra Bose ^{submitted a dissentient report} and the Commission, which laid on the table of the House on 03.09.1974, come to the conclusion that Netaji Subhas Chandra Bose died in plane crash in Tokyo, Japan.

The xerox copy of the Chapter One, Preamble, Page No. 1 and 2 of the Mukherjee Commission Report dated ^{08.11.2005} is enclosed herewith and marked as Annexure - P/7.

The petitioners further want to refer and rely upon the report of Mukherjee Commission as to the statements of the then Prime Minister Shir Morarji Desai made on 28.08.1998 in the floor of the Parliament reported therein in the said said Report under heading (b) Its Limitation and Constraints (i) re: records/document in Point No.2.5, Page No. 13 and 14 and it was held that the Government find it difficult to accept that earlier conclusions are decisive.

The xerox copy of the Page No. 13 and 14 of the said Mukherjee Commission Report wherein the said statements of the then Prime Minister Morarji Desai are quoted, are enclosed herewith and marked as Annexure -P/8 collectively.

:: 6 ::

Furthermore, with reference to averments made relating to ~~the petitioners want to say that the same~~
 Action Taken Report (ATR) ^{reason} has been rejected on 17.05.2006 without assigning any report and without having any authority under the provisions of The Commission of Inquiry Act, 1952. The Government being the executing authority could either act upon the said report or not but in no circumstances, the Government is empowered to ~~reject the Commission Report~~ ^{on 17.05.2005} in as much as it was constituted under Judicial intervention. Such rejection of Action Taken Report (ATR) ~~xxx~~ is absolutely illegal and without any authority of law.

9. With reference to averments made in Paragraph No.9 of ^{the petitioners further state the facts}
 this Writ Petition relating to Colonel Habibur Rahman, who was the Co-passenger with Netaji Subhas Chandra Bose and he was present before Shah Nawaz Committee as Witness (SW-4) but neither he did appear before the Khosla Commission nor the the Government took any step to ensure ~~x~~ his appearance before the said Commission as such ~~xxx~~ he was not testified by the said Commission. Furthermore, the said Committee and Commission never had gone to the place of alleged plane crash i.e. in Taihoku, Japan though the reports of the Committee and Commission were the main source or reason to ^{my} believe and ~~for confidence and belief~~ of the Government of India and still ^{my} want to and clutch cherish such belief.

contd....9

10. With reference to averments made in Paragraph No.14

of this Writ Petition, the petitioners further state that the

Government of India utterly violated the provisions of the

Public Records Act, 1993, 'the records of disappearance of Netaji

Subhas Chandra Bose has got great national and international

importance as such it should be kept in proper manner in accor-

dance with law but, however, such records relating to

"Investigation into the circumstances leading to the death

of Subhash Chandra Bose" was destroyed on 06.03.1972 (Ref. File

No. 12(226)/56-PM of the Mukherjee Commission Report). The said

act of destruction of such Records of National and International

importance is antinational activities and vindictive attitude and

by way of such conduct the whole nation are made befooled and

kept under the dark for a long time, which is the contribution

of the Central Government. The xerox copies of Page No. 10 & 11 of Mukherjee Commission report confirming the destruction of the said record of Netaji in 1972 are enclosed as Annexure - Pg. 6.

11. With reference to averments made in other different

Paragraph of this Writ Petition the petitioners, state that

since respondents concerned have not filed their affidavit-in-

Opposition as yet though there was a direction for the same on

05.01.2007, the Hon'ble Court may proceed with this Writ Peti-

tion holding that the factual averments made therein deemed

to have been accepted by the Government of India. The petitioners crave leave to refer and rely upon some decisions on this points of such acceptance at the time of hearing.

12. The petitioners submit that this Supplementary Affidavit may be treated as part of Writ Petition and it may be heard alongwith the main Writ petition.

13. That the statements made in Paragraph No. 1, 2, 3, ...
..... are true to my knowledge and the statements
made in Paragraph No. 4, 6, 7, 8, 9, 10, ... are true to my
information derieved from the relevant records which I verily
believe to be true and rest are my humble submission before
this Hon'ble Court.

Subhash Chandra Basu

Prepared in my office.

The deponent is known to me.

Subhash Chandra Basu

Clerk to Mr.

(Subhash Chandra Basu)
Petitioner-in-person.

Advocate.

Solemnly affirm before me
this 28th day of February,
2007.

COMMISSIONER OF OATH.

41 9
W.P. BENCH No 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
~~Original Jurisdiction~~
Original Side



Seal / 28-17-97
The hon'ble The Chief Justice

And

The hon'ble Justice

Barin Ghosh

President of the Union of India

In the Matter of : An application under Article 226 of the Constitution of India;

And

In the Matter of : Public Interest Litigation;

And

In the Matter of : A writ in the nature of Mandamus;

And

In the Matter of : A writ in the nature of Certiorari;

And

In the Matter of : Prohibition and/or any other such appropriate writ or writs, order or orders, direction or directions;

And

In the Matter of : Investigation in connection with the ashes of Netaji Subhas Bose as declared and/or announced by the Govt. of India

And

In the Matter of : Inaction/non-action on the part of Govt. of India not having declared anything about the death of Netaji Subhas Chandra Bose before having taken any initiative to bring the ashes of Netaji Subhas Chandra Bose from Hencogi temple of Japan;

And

In the Matter of : Ashim Kumar Ganguly, son of Late Netaji Chandra Ganguly, residing at 23/A, Sib Krishna Da Lane, P.O. Kankurbachi, Calcutta- 700 054.
.... Petitioner

Versus

1) Govt. of India, service through Secretary, Ministry of Defence, New Delhi, (2) Govt. of West Bengal, service through Secretary, Home Department, Writers' buildings, Calcutta-1 (3) Ministry of Human Research & Development having its office at New Delhi ; (4) Ministry of Home affairs, Govt. of India, having its office at North Block, Central Secretariat, New Delhi- 4; (5) Ministry of External affairs, service through the Secretary having its office at South Block, Central Secretariate, New Delhi.

..... Respondents

Upon reading a petition of Ashim Kumar Ganguly, abovenamed (hereinafter referred to as 'the said petitioner') and his affidavit in verification thereof affirmed on the twenty ninth day of August, one thousand nine hundred ninety-seven and the exhibits annexed to the said petition and marked respectively 'A' and 'B' all filed on the twenty ninth day of August, one thousand nine hundred ninety seven. And upon hearing Mr. Subrata Mukherjee (Mr. Rajesh Ganguly appearing with him) Advocate for the said petitioner and Mr. U.P. Mukherjee, Advocate for the respondents abovenamed and upon the Advocate for the respondent Union of India abovenamed echoing the observations made by the Supreme Court of India in (Union of India & Ors.-Vs.- Bijan Ghosh & Ors.) (1998 W.B.L.R. (SC) Page 9) stating before this court that, without there being a conclusive proof and/or otherwise determined in accordance with law the Union of India cannot accept that Netaji Subhas Chandra Bose

3.

also in Taiwan on eighteenth day of August, one thousand nine hundred forty five or at any later date and that the ashes which are said to be kept in the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and this court having no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose And it being difficult to accept that the Defence Minister of the Country has made a statement of such consequences as included in the said petition without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported And the said petitioner through the said petition now alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at the Kencogi Temple, Japan And in view of the assurance that nothing of the sort is likely to be done by the Government of India.

It is ordered that before accepting the ashes which are allegedly kept at the Kencogi Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence And it is further ordered that this matter is disposed of accordingly.

Witness: Shree Prabha Shanker Mishra, the Chief Justice at Calcutta aforesaid the seventh day of April in the year one thousand nine hundred and ninety-eight.

Gouranga Chatterjya..... Advocate.

Tapan Ch. Dutt..... Advocate.

S. Chatterjee..... Advocate.

P. Ghosh
03.8.98.
For Registrar.

G. B.

of record
1 the

17/5

17.8.98

of record
1 the

B. K. S. S.

S. P. Dutt

12 44
No. 1805

34 128
OF 1997

IN THE HIGH COURT AT CALCUTTA

~~Ordinary Original Civil Jurisdiction~~

Constitutional Writ Jurisdiction

Original Side

Ashim Kumar Ganguly

Union of India & Ors.

(i) Date when the decree or order was completed

(ii) Date of application for copy

(iii) Date of receipt of the requisite number of folios and stamp

(iv) Date of delivery of the requisite folios and stamp

(v) Date on which the copy is ready for delivery

(vi) Date when delivery was taken of the copy by the applicant

Order made of the 7th day of April, 1998.
Filed this 10th day of

August, 1998.

K. Rakshit
Superintendent,
Order Department.

Superintendent,
Cognate Department
High Court, C.S.

Rajesh Kumar Ganguly
Advocate.

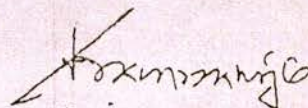
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
- and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings -- that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

Chapter One

Preamble

1.1 The controversy over the death of Netaji Subhas Chandra Bose ('Netaji' for short), who needs no introduction, surfaced after the announcement from Tokyo on August 23, 1945 that Netaji had died in a plane crash on August 18, 1945. However, some press reports published from Tokyo and Taihoku (Taipei) had given contradictory versions. After independence of India, there was a popular demand for an inquiry into the alleged disappearance/death of Netaji. The issue was also raised in the Parliament from time to time. Responding thereto, the then Prime Minister on December 3, 1955, announced in the Parliament that an official committee would be appointed to go into the matter. Accordingly, the Government of India appointed a three-member Inquiry Committee, vide its Notification No.F-30(26)FEA/55 dated April 5, 1956, with Shri Shah Nawaz Khan, Parliamentary Secretary to the Ministry for Transport and Railways, as its Chairman and Shri Suresh Chandra Bose, elder brother of Netaji and Shri S. N. Maitra, ICS, Chief Commissioner, Andaman & Nicobar Islands, as its members. The task of the Committee, as it appears from the Notification, was to inquire into and report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok on or about August 16, 1945 and his alleged death as a result of an aircraft accident and subsequent developments connected therewith. After considering the evidence collected by the Committee, two of

them (Shri Shah Nawaz Khan and Shri S.N.Maitra) came to the conclusion that Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member, submitted a dissentient report stating that there had been no plane crash involving Netaji's death. The majority report was accepted by the Government of India.

1.2 The majority view of that Committee, however, did not satisfy the public in general and several members of the Parliament in particular, who raised a demand for a fresh inquiry into the matter. Under the circumstances, the Government of India, in exercise of its powers under the Commissions of Inquiry Act, 1952, (the Act for short), constituted an Inquiry Commission vide its Notification No.25/14/70-Poll.11 dated July 11, 1970, headed by Shri G.D. Khosla, Retired Chief Justice of Punjab High Court. The Commission was asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and the subsequent developments connected therewith. The said Commission examined some of the witnesses who had testified before the Shah Nawaz Committee and some other witnesses including Shri Shah Nawaz Khan and Shri Suresh Chandra Bose. That Commission also came to the conclusion that Netaji had succumbed to his injuries sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo. The findings of the Khosla Commission also did not end the controversy surrounding Netaji's death; several important people and personalities including some members of Netaji's family, Shri Samar Guha, ex-MP, and others did not accept the findings of the Khosla Commission. Since then there had been a widespread feeling among the public that the issue of finding the truth about Netaji's disappearance / death still remained unresolved and there was a consistent demand for another inquiry into the matter.

2.4.5 From the above resume of facts relating to the file in question it is evident that the stand taken by the Cabinet Secretariat is evasive and unfathomable. The Director of the Prime Minister's office (PMO for short) clearly stated in her letter dated July 4, 2000 (referred to earlier) that the file "was destroyed in 1972.... since records of Cabinet proceedings are kept permanently in the Cabinet Secretariat from where these may be procured". Since the file is said to have been destroyed four years after formation of the Cabinet Secretariat and since the records of the Cabinet proceedings are to be kept permanently in the Cabinet Secretariat the only conclusion that can be drawn is that if the file had been destroyed as claimed, the copies of the documents contained in the file were in the Cabinet Secretariat and obviously for this reason the Director of PMO asked the Commission to get the file procured therefrom. Judged in that context, the Commission would have been fully justified in pursuing the matter further with the Cabinet Secretariat to bring to their notice that their plea for not producing the papers was specious and tenuous for the reasons aforesaid, but the curt reply of its Deputy Secretary peremptorily forestalled all contemplated future attempts of the Commission to retrieve atleast the copies of the documents contained in a file bearing the subject heading "Investigation into the circumstances leading to the death of Shri Subhas Chandra Bose" which was not only the subject matter of inquiry of the Khosla Commission but is also of the present Commission.

2.5 Some of the deponents before this Commission brought to its notice that on August 3, 1977 Prof. Samar Guha moved the following motion in the Parliament (Lok Sabha):-

"That this House do consider the Report (1974) of the Commission of Inquiry into the disappearance of Netaji Subhas Chandra Bose laid on the Table of the House on the 3rd September, 1974"

and in reply thereto Shri Morarji Desai, the then Prime Minister of India, made the following statement on August 28, 1978:-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee (sic) of enquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed, some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive."

2.5.1 Pursuant thereto this Commission asked the Prime Minister's office (PMO), the Ministry of External Affairs (MEA), the Cabinet Secretariat (CS) and the Ministry of Home Affairs (MHA) to ensure production of all those 'further contemporary official documentary records' which as stated by the Prime Minister had 'also become available' to the Government of India. They were also asked to send to the Commission

(b) Its limitations and constraints

(i) re : records / documents

2.4 As stated earlier, some files / documents have not been produced by the Government of India in spite of repeated reminders. Out of these files / documents the following would have been, in the opinion of the Commission, of great assistance in answering the terms of reference:-

2.4.1 One of the files called for by the order dated March 23,2000 was file no.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose). In response thereto the Director of the Prime Minister's office (PMO for short) intimated by her letter dated May 2,2000 that the above file was not available as it had been destroyed. On receipt of the above communication the Commission asked her, by its letter dated May 23,2000, to intimate to the Commission the subject and contents of the above file and the circumstances under which the said file had been destroyed. When the Commission was awaiting her reply Shri A. K. Paitandy, Director (Internal Security-1) in the Ministry of Home Affairs ('MHA' for short) filed an affidavit before this Commission on June 22,2000 wherein he stated, inter alia, as under:-

".... in view of the fact that some of the departments / organisations have informed that they do not have any papers on Netaji / INA, there seems to be

some confusion about filing of affidavits to that effect by them. In view of this fact and in deference to the directions/orders of the Commission, this Ministry is filing this affidavit on behalf of the following and I accordingly further affirm and state that there are reportedly no files/papers concerning Netaji / INA in their (the under mentioned departments') possession (emphasis supplied) :-

- i) Cabinet Secretariat
- ii) Intelligence Bureau
- iii) Research and Analysis Wing"

2.4.2 The assertion made by Shri Paitandy, quoted above, stood belied, as the Director of the PMO in reply to the Commission's letter dated May 23, 2000 stated (in her letter dated July 4, 2000) the "file No.12(226)/56-PM which contained agenda paper/cabinet decision regarding "Investigation into the circumstances leading to the death of Shri Subhas Chandra Bose" was destroyed in 1972 in course of routine review/weeding of old records since records of Cabinet proceedings are kept permanently in Cabinet Secretariat, from where they may be procured".(emphasis supplied).

2.4.3 To ascertain which of the above versions was correct the Commission wrote a letter to the Secretary, MHA on August 18, 2000 calling upon him to produce photocopies of all the agenda papers/Cabinet decisions concerning "Investigation into the circumstances leading to the death of Netaji" from the custody of the Cabinet Secretariat. Another letter was addressed to the Secretary of the Prime Minister's Secretariat on August 25, 2000 calling upon him to produce copies of the orders regarding destruction of files/documents concerning Netaji Subhas Chandra Bose as

36) 52
DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

IN THE MATTER OF:

W.P. No. 27541 (W) of 2006.

-And-

IN THE MATTER OF:

An application under Article 226
of the Constitution of India;

-And-

IN THE MATTER OF:

SRI ASHIM KUMAR GANGULY AND ANOTHER

..... PETITIONERS.
-VERSUS-

UNION OF INDIA AND OTHERS.

.... RESPONDENTS.

or, "SUPPLEMENTARY AFFIDAVIT ON BEHALF
THE PETITIONERS"

On Record:

MR. SUBHASH CHANDRA BASU

86, Sadar Boxi Lane,

Post Office, Police Station

and District - Howrah, Pin: 711101.

Phone : M - 9830585206.

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@calenmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

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20 No 11CR

The 11th September, 2007.

REGD. WITH A/D POST.

✓
Mr. S. K. Goswami,
Under Secretary (ARMS) to the Govt. of India,
Ministry of Home Affairs,
Lok Nayak Bahavan, 9th floor,
Khan Market,
New Delhi - 110 003.

Ref. : File No. 1204/Home/06/III dt. 21.12.06 &
File No. 1204/Home/06-III/1824 dt. 30.07.2007.

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Sir,

This is to inform you that upon your telephonic calls on 05.09.2007 and 10.09.2007, I am enclosing herewith photo copy of aforesaid writ petition and photo copy of supplementary affidavit of the petitioners for your record and doing the needful.

In this context, it would be highly appreciated if you kindly arrange to reimburse the relevant expenses for a sum Rs. 208/= (Rupees Two hundred eight) for the purpose, by an A/c Payee Cheque payable at Kolkata only (above expenses towards photo copy of writ petition, photo copy of supplementary affidavit and postage and stationery etc.)

Please do the needful.
Thanking You.

Encls : As stated above.

Copy to :
The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

For information and necessary action.

Yours faithfully,
Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)

Advocate.

11.09.2007

Received on
17.9.07.
for
17/9/07

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44
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DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

W.P. No. 27541 (W) of 2006.

Subject matter relating to :-

"RESIDUARY"

"PUBLIC INTEREST LITIGATION"

Under Group - IX Head

of the Classification list:

:: CAUSE TITLE ::

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS.

-VERSUS-

UNION OF INDIA AND OTHERS. RESPONDENTS.

ON-RECORD ::

SRI SUBHASH CHANDRA BASU,
Petitioner-in-person.

Address: 86, Sadar Boxi Lane,
Post Office, Police Station
and District - Howrah, Pin: 711101.

Phone : 2640-1217.

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DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

W.P. NO. 27541 (W) OF 2006.

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS
-VERSUS-
UNION OF INDIA AND OTHERS RESPONDENTS.

:: I N D E X ::

<u>SL. NO.</u>	<u>PARTICULARS OF DOCUMENTS</u>	<u>ANNEXURE</u>	<u>PAGE</u>
01.	List of Dates	'A'	
02.	Question of Law involved	'B'	
03.	Writ Petition with Affidavit		01 - 32
04.	Xerox copies of the Mukherjee Commission Report on 'Netaji' collected from Web-site.	<u>"P/1"</u>	39-41
05.	Xerox copy of the Notification dated 14.05.1999 issued under Memo No. 339(E) for appointment of Mukherjee Commission.	<u>"P/2"</u>	42-44
06.	Xerox copy of the representation dated 27.09.2006.	<u>"P/3"</u>	45-48
07.	Xerox copy of the News paper- cutting containing the news in question published in the Ananda- bazar Patrika dated 07.12.2006.	<u>"P/4"</u>	49

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-46- (40)
DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

SRI ASHIM KUMAR GANGULY AND ANOTHER. ... PETITIONERS.
-VERSUS-
UNION OF INDIA AND OTHERS ... RESPONDENTS.

:: LIST OF DATES ::

<u>SL.</u> <u>NO.</u>	<u>DATE</u>	<u>E V E N T S.</u>
01.	18.08.1945	:: It was alleged that Netaji Subhas Chandra Bose died in Plane Crash in at Taihoku in Formosa.
02.	1956	:: Sha Nawaz Committee was constituted.
03.	1970	:: Khosla Commission was constituted.
04.	August, 1978	:: Prime Minister Morarji Desai cancelled the earlier Committees and Commission report on Netaji's alleged death.
05.	22.01.1992	:: Press communique announced as to conferment of award of Bharat Ratna posthumously posthumously on Netaji Subhas Chandra Bose.
06.	04.03.1997	:: Transfer Case (C) No. 7 of 1994 was decided. Press communique was cancelled by Supreme court
07.	07.04.1998	:: W.P. No. 1805 of 1997 was decided by the Hon'ble High Court, Calcutta.
08.	30.04.1998	:: W.P. No. 281 of 1998 was decided by the Hon'ble High Court, Calcutta.
09.	24.12.1998	:: West Bengal Legislative Assembly unanimously adopted the Motion for setting up Commission on the Netaji's death.
10.	1999	:: Commission of was constituted. Hon'ble Justice Manoj Kumar Mukherjee was appointed as the Chairman of the said Commission.
11.	08.11.2005	:: Mukherjee Commission Report was submitted to the Government of India.
12.	17.05.2006	:: Report of the Mukherjee Commission was tabled in the Parliament and was rejected by the Govt
13.	27.09.2006	:: Petitioner sent representations to the concerned authority.
14.	07.12.2006	:: Report published in the Anandabazar Patrika stating that the Govt. would continue to bear the expenses of Renkoji Temple and so-called ashes ashes of Netaji Subhas Chandra Bose.

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47 (41)

DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION.

(APPELLATE SIDE)

W.P. NO. 27541 (W) OF 2006.

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS.
-VERSUS-
UNION OF INDIA AND OTHERS RESPONDENTS.

QUESTION OF LAW INVOLVED:

SL.
NO.

QUESTION OF LAWS INVOLVED

01. Whether the Government of India can incur any amount from public exchequer for maintenance ~~af~~ and upkeeping the Renkoji Temple in Japan allegedly keeping the ashes of Netaji Subhash Chandra Bose after filing/submitting the Mukherjee Commission report on 'Netaji' ?
02. Whether the Government of India after appointing the Mukherjee Commission could accept or uphold the earlier Committee/Commission reports and could reject the present Mukherjee Commission report without showing any reason ?
03. Whether the Government of Indian without any rhyme or reason could withhold the Mukherjee Commission report ~~as per the~~ and could remain silent for a long period as to placing the same before the Parliament for open debate or discussion amongst the members of the Parliament ?
04. Whether the Government of India could incur any amount from public exchequer for alleged death of Netaji on 18.08.1945 after submission of Mukherjee Commission report ?
05. Whether it is the ~~dx~~ duty of the Government of India to stop all expenses for Renkoji Temple in Japan and for alleged ashes of 'Netaji' kept in the said Temple ?

58 92- (42)

DISTRICT : HOWRAH.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)
—

W.P.No. 27541 (w) OF 2006.

In the matter of :

An application under Article 226 of
the Constitution of India.

-And-

In the matter of :

A writ and/or writs in the nature of
Mandamus ;

-And-

In the matter of :

/ A writ and/or writs in the nature of
Mandamus ;

-And-

In the matter of :

A writ and/or writs in the nature of
Prohibition ;

-And-

In the matter of :

A writ and/or writs in the nature of
Certiorari ;

-And-

In the matter of :

Any other writ or writs, order or Orders,
direction or directions ;

-And-

In the matter of :

The Right to information Act, 2005 ;

-And-

In the matter of :

The Commission of Inquiry Act, 1952 and
Rules framed thereunder ;

-And-

In the matter of :

The Public Records Act, 1993 ;

-And-

In the matter of :

Violation of the provisions of Article

14,19 (1)(a), 51A(b) and 21 of the
Constitution of India.

-And-

In the matter of :

Apathetic attitude of the concerned
authorities in considering the
representation dated 27.09.2005 ;

-And-

In the matter of :

Illegal and arbitrary decision of the
concerned Respondents for continuous
wasteful expenditure of public Money
from the Government Exchequer for
maintenance of so-called alleged ashes
of Netaji Subhas Chandra Bose kept in
the Renkoji Temple in Tokyo, Japan ;

-And-

In the matter of :

Non-acceptance of report of Justice
Mukherjee Commission constituted to
find out the clue of alleged death of
Netaji Subhas Chandra Bose allegedly
took place in Plane Crash on 18.8.1945.

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:- 4 -:

-And-

In the matter of :

Arbitrary and whimsical decision of
withholding the Mukherjee Commission's
Report and not placing the same before
the members of Parliament for open
debate or discussion ;

-And-

In the matter of :

Deliberate and wilful contravention
of the provisions for maintenance of
Public Records by the concerned
Government and gross dereliction of
duties and serious consequences of
damage and/or destruction of the same

-And-

In the matter of :

1. SRI ASHIM KUMAR GANGULY,
son of late Netai Chandra Ganguly,
residing at 90, A.K. Mukherjee Road,
3rd floor, Police Station Baranagar,
Kolkata-700 090.

:- 5 -:

2. SRI SUBHASH CHANDRA BASU

son of late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane,

Police Station and District. Howrah.

Pin Code No.- 711 101 ;

....

... PETITIONERS.

-Versus-

1. Union of India,

service through the Secretary,
Ministry of Home Affairs, (North Block)
Government of India, New Delhi.

2. Principal Secretary,

Office of the Prime Minister,

Government of India, 7, Race Course
Road, New Delhi

3. Secretary,

Ministry of Foreign Affairs,

Government of India, New Delhi.

4. Secretary,

Ministry of Parliamentary Affairs,

Government of India, New Delhi.

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1- 6 -1

5. Director,

Netaji Research Bureau,
/ 38/2, Lala Lajpat Roy Road,
Barrack Road, Kolkata. - 70,

...

... RESPONDENTS.

To

The Hon'ble Vikas Shridhar sirpurkar, Chief Justice and His
Companion Justices of the said Hon'ble Court.

The humble petition of the above
named petitioners

Most Respectfully sheweth :-

1. That the petitioners are the peace-loving and public spirited citizens of India having their permanent address mentioned in the Cause Title hereinabove.
2. That the petitioner no.1 is the learned Advocate of this Hon'ble court and he is involved in various social and philanthropic activities and earlier he came forward on several occasions to espouse or ventilate the grievances of the hapless people before this Hon'ble Court and at the instance of the petitioner No.1 a large numbers of political and social victims were saved, rehabilitated and heaved a

sign of solace and as a citizen of this Country he further painfully observed the apathetic attitude of the Government of India towards the World's famous Hero like Netaji Subhas Chandra Bose and of his own volition and/or accord spontaneously challenged the indifferent and derogatory attitude of the Government of India towards " Netaji " by filing the writ petition being W. P.No. 1805 (w) of 1997, decided on 07.04.1993, which was the initiation for constituting the Commission of Inquiry on the mysterious disappearance of Netaji Subhas Chandra Bose (hereinafter referred to as " Netaji").

So as to the petitioner No.2 is concerned, he is also the learned Advocate of this Hon'ble court and the office Secretary of Howrah Ganatantrik Nagarik Samity, a non-party Citizen Forum, which is the sentinel of the City of Howrah and there was/is hardly any major public issue which was not attended by the said Samity and a large number of public Interest Litigations viz. on Calcutta Maidan,

Victoria Memorial, Police Morgue, Rabindra Sarobar, Botanical Garden, Shibpur, Howrah Bridge and Calcutta Traffic Managements etc. were filed by the petitioner no. 2 with others petitioners before this Hon'ble Court and as a result many Civic authorities were compelled to discharge their statutory duties and public goods were done and further he was one of the petitioners before the Hon'ble ^{Supreme} Court of India regarding some Civic problem of the City of Howrah and based on which and by the order dated 16.4.1996 passed in Writ petition (C) No. 330 of 1995, this / Environmental Bench was constituted, which is popularly known as " Green Bench".

3. That the emergence of Netaji Subhas Chandra Bose in the history of struggle for Independence was epoch-making and the role of Netaji and his contribution and gallant Deeds for liberation of Indian Independence and his great ideals are honoured from the core of the hearts and if any

person is blessed to be born in any part of the Indo-Pak Sub-Continent, unhesitatingly he should bow down his head before Netaji for his high ideals and contribution who had shakened the British Imperialism and tried to hasten the Indian Independence and brought the same to our threshold and by arms revolution with the help of Azad-Hind-Fouz he brought the blue firmament and new harizon of Independence for us well in advance. Such of great role of the great son of India, who had insurmountable personality, sky-kissing popularity and inbuild quality of high ideals, was never assessed and/or properly honoured by the Government of India and always inclined to show an indifferent attitude towards "Netaji", the great National "Hero" of our country and when the whole nation was about to go on total oblivion as to our national hero, heritage and the noble ideals which inspired our national struggle for freedom due to motivation a writ petition being W.P.No. 1805 (w) of 1997 was filed by the petitioner No.1, which was decided on 07.04.1998 challenging on the question of death of Netaji allegedly on 18.08.1945 in Plane Crash and his alleged ashes kept

in the Renkoji Temple, Japan and thereafter a further writ petition being W.P.No. 231 of 1998 which was decided on 30.04.1998 and reported in AIR 1999 Cal.9, was filed in this Hon'ble Court challenging the attitude of the Government of India towards "Netaji", inter alia with the following prayers :-

i) To classify and disclose all documents relating to Netaji Subhash Chandra Bose including the Indian National Army;

ii) To make a categorical statement whether the name of Netaji was still in the list of War criminals drawn up after the Second World War and issue a press communique to the said effect ;

iii) Not to allow any agency or publish or any person to publish the story of the death of Netaji Subhas Chandra Bose in the alleged plane crash on 18.08.1945 ;

iv) To disclose the stand of the Government of India regarding Netaji Subhas Chandra Bose if he is found on Indian Soil. Whether Government of India will welcome him or hand-over him to the allied forces for trial as war Criminal and make a press communique to that effect "

and

v) To produce and/or transmit all the records, files and documents as mentioned in Annexure "F" to the petition about disappearance of Netaji Subhas Chandra Bose since August 18, 1945 and subsequent thereto ;

The aforesaid writ petition being W.P.No. 231 of 1998 was disposed of on 30.4.1998 inter alia, ^{with} ~~on~~ the following orders :-

1. Respondent shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Inquiry as a Special Case for the purpose of giving an end to the controversy ;

a) Whether Netaji Subhas Chandra Bose is dead or alive ;

b) If he is dead, whether he died in the Plane Crash, as alleged ;

c) Whether the ashes in the Japanese Temple are ashes of Netaji ;

d) If he is alive, in respect of his whereabouts ;

2. The Respondent shall follow for the said purpose the direction of this court given in W.P.No.1805 of 1997, namely to take the people of India in confidence ;

3. Respondents shall at appropriate level examine/scrutinise all publication pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence ;

4. Respondents, if so advised, shall inform all publication house to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above ;

4. That the said writ petition being W.P.No. 231 of 1998 was heard by the Hon'ble Division Bench (Public Interest Litigation Bench) on 30.04.1998 (and the said Hon'ble Bench ~~on 30.04.1998~~) and the said Hon'ble Bench was pleased to, inter alia, pass the orders as stated hereinabove and thereafter the West Bengal Legislative Assembly, unanimously adopted a Motion on 24.12.1998 for setting up a Commission of Inquiry

and the Chief Justice of the Hon'ble Supreme Court of India thereafter had given the names of the Chairman of the said Commission and the Hon'ble Justice Manoj Kumar Mukherjee (Retired) of the Hon'ble Supreme Court of India was, thus, appointed as the said Chairman and finally the Commission of Inquiry was constituted in the year 1999.

5. That it may not be out of place to mention here that before setting up and/or constituted the said commission of Inquiry the Government of India made an attempt to confer posthumous Bharatratna Award to Netaji and further the then Defence Minister took the initiative to bring the alleged ashes of Netaji Subhas Chandra Bose to our Country allegedly kept in the Renkoji Temple, Japan and on that issue a Writ petition being C.O.No. 6720 of 1993 (Union of India -vs- Bijan Chosh) was also filed by the learned Advocate in this Hon'ble Court and the same was, afterwards, transferred to the Hon'ble Supreme Court of India and Transfer case being / Transfer Case (C) No.7 of 1994 which was decided on 04.03.1997 and was reported in AIR 1997 SC-3019 wherein the Government of India was compelled to retreat and abandon the long

cherished illusory decision and, hence, there was no necessity to proceed further with the writ petition and was disposed of accordingly with the declaration that the press communique on 22.01.1992 announcing conferment of award of Bharat Ratna Posthumously on Netaji should stand cancel .

6. That after setting up of Commission of Inquiry under the Chairmanship of Hon'ble Justice Manoj Kumar Mukherjee (Retired) (hereinafter referred to as " Mukherjee Commission") proceeded sincerely to find out the clue of mysterious disappearance of Netaji Subhas Chandra Bose and/or to unearth whether Netaji died in alleged plane crash that took place at Taihoku (Now Taipei) in Taiwan (formerly Formosa) on 13.03.1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan is that of Netaji Subhas Chandra Bose or not. The all sections of people of the Country welcomes this Commission of Inquiry since it was the fervent aspiration for a long time and it was the people's belief that this Commission of Inquiry would be able to bring the people of

of India in confidence and to unearth the real truth which was kept deliberately hidden for a long time for some unknown reason and/or for vested political vendetta or motivation.

7. That said Mukherjee Commission (hereinafter referred to as the said "Commission") has examined 131 nos. of witnesses and had gone through and/or perused 303 nos. of documents as " Exhibits" and further visited all possible places for the purpose of the said Commission to find out whether there was/is any clue of possible death of Netaji alleged to have claimed or took place and also took other help of investigations to come to the conclusion as per terms of reference, seriatim is as follows :-

- a) Netaji Subhas Chandra is dead ;
- b) He did not die in plane Crash as alleged ;
- c) The ashes in the Japanese temple are not of Netaji;
- d) In absence of any clinching evidence a positive answer cannot be given ; and
- e) Answer already given in (a) above ;

As regards the Ancillary query (vide paragraph 3 of the notification) the Commission is of the view consequent

/ upon its above findings - that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.

7. That the report of the Mukherjee Commission was submitted by the Hon'ble Justice Manoj Kumar Mukherjee on 08.11.2005 to the Government of India, and the Commission report was tabled in the Parliament of India on 17.05.2006 when the Government of India in the "Action Taken Report" (ATR) has expressed their view and/or stand that the Government of India has rejected the findings of the Commission, saying that it did not agree with the findings. Such rejection was without showing any reason and further upheld the earlier two reports - the Sha Nawaz Inquiry Committee held in 1956 and Khosla Commission held in 1970 but the same were declined to accept by the former Prime Minister Morarji Desai, in August, 1978 while sitting in the floor in the Parliament and he cancelled the same unhesitatingly.

The xerox copied of the Mukherjee Commission Report on 'Netaji' collected from web-site are enclosed herewith and marked as Annexure - P/1.

8. That since the Mukherjee Commission was set up or constituted through the Judicial intervention and since the

contd....

name of the Chairman was given by the Chief Justice of the Hon'ble Supreme Court of India and thus, was appointed the sanctity, realibility and credence are obviously claimed to be much more than that of earlier Inquiry Committee led by Sha Nawaz and Khosla Commission led by D.S. Khosla in this regard. The said report was filed by the Mukherjee Commission absolutely based on available evidence and it has reflected a complete light and clear vision in the matter of alleged death of Netaji Subhas Chandra Bose and thus, the people are agreed to accept the said report with due respect from the core of their hearts. It is further stated that the earlier two, Committee and Commission, were constituted by the Government of India of their own accord on which the Government of India had the control and supervision in all respect for which the same had lost the confidence or credence of the people at large. Furthermore, the earlier two, Committee and Commission, had never visited any possible place of death allegedly claimed to have taken place on 18.03.1945 at Taihoku in Taiwan. Furthermore, Colonel Habibur Rahaman appeared before the Sha Nawaz Committee,

when he did not face any cross-examination, but he did not appear before the Khosla Commission in order to avoid cross-examination and even the Government of India made no arrangement or attempt to ensure his presence before the said Khosla Commission as a result the entire purpose for such Committee and Commission were frustrated and/or miserably failed. In spite of such glaring defects, the earlier two Committee and Commission were honoured and was inclined to accept by the Government of India and in reality the Government of India has accepted the same and still the Government of India stick to their earlier stand and thus, the Government is not inclining to accept the report submitted by Mukherjee Commission.

10. That thereafter much water have been allowed to flow over the river Ganges but the Government of India has not come forward or tried to put the matter for a permanent end and for some political motivation they want to clutch the earlier Committee and Commission report and they are not leaving their inclination as yet for the same which has

/ culminated this present writ petition challenging their indomitable purportive stand taken in this regard but they are not placing the Mukherjee Commission report for open debate before the members of Parliament and the reason best known to them. Be it stated here that the Government of India never has shown any interest in this matter and had there been any interest to bring in public confidence in this regard, it was their solemn duty for this National Hero to place the matter for open debate and should not retreat in this way of patronising the old cherish concept in disguise.

14. That it is further stated that if it was the firm indomitable insurmountable stand with regard to death of Netaji, the Government of India could have challenged the ^{as to Constituting Commission of Inquiry} matter, further before the Hon'ble Supreme Court of India and they could have expressed their negative view for constituting and spending public money for the further Commission on the death of Netaji. It is really curious enough that the Government of India, Ministry of Home Affairs vide Notification, New Delhi, the 14.5.1999, Memo No. S.O. 339(E) has appointed a Commission of Inquiry

of Mr. Justice M. K. Mukherjee, a retired Judge of the Supreme Court of India and when for the Commission a lot of money was spent from the public exchequer to put an permanent end to the matter and when after a long endeavour and/or effort and after completion of a mammoth ^{strenuous} ~~straining~~ works, the Commission had ^{Completed the work} submitted the report and brought in the confidence of the public, the Government of India rose to the occasion to clutch their earlier stand and the Government of India (hereinafter referred to as the "said Government") has not accepted report of Mukherjee Commission and uphold their earlier view or stand in this regard. It is further stated that after spending public money from public exchequer for this present Commission and after submission of report, there must be public accountability for upholding the earlier two reports or stand by the Government in this regard. Moreover, the Government could have clear their stand that even after third Commission, i.e. Mukherjee Commission they would never change their earlier stand taken by the Government India with political motivation and/or some other purpose.

The xerox copy of the said Notification dated 14.05.1999 issued under Memo No.339(E) is enclosed herewith and marked P-2 as Annexure P-2,

12. That being the position the Government of India should come forward with a formal declaration of death of Netaji Subhas Chandra Bose, otherwise, the Government has ^{got} no right to spend the public money from the public exchequer for upkeep^{ing} and maintenance of the ^{Remkoji} Temple in Taihoku, Japan and/or to preserve and reserve the ashes alleged to have been claimed of Netaji Subhas Chandra Bose and in the event if such formal declaration is not forthcoming, the Government of India should forthwith stop all expenditures in respect of alleged death of Netaji Subhas Chandra Bose and if there be any other expenditure for research works of death on Netaji Subhas Chandra Bose from the public exchequer, it is also required to be stopped with immediate effect for public interest inasmuch as the country like ours where more than 50% people live under poverty line, never support such wasteful expenditure of public money from public exchequer for unnecessary purpose with political motivation. Furthermore,

if there be any institute for continuous research on Netaji's death holding firmly the date of death is on 13.03.1945 in plane crash in Taihoku, in Japan such Institute after submission of Mukherjee Commission's Report before the Government of India, required to be interred with or derecognised for all purpose for the interest of the people at large, otherwise, the under-current will ^{to flow,} be continued, which would result in the slur and/or disregard to the prestige, dignity and the status of the National Hero Netaji Subhas Chandra Bose and also public commotion, resentment, furor throughout the breadth and length of the country could not be put to an end, which was not the object of this Commission.

13. That the conducts of the Government as stated herein above, are incredible and some vested interest the people who are still inclined to hold the earlier decision as sacrosanct or authentic but without any basis causing thereby direct slur or disregard to the National Hero, who had intentional importance in all respect and their only purpose is to lower down the prestige, dignity and high ideals of Netaji Subhas Chandra Bose which

the people still possess the unfathomed and unshaken faith in their core of the hearts inasmuch as the people have enthroned their beloved National leader in the minds and the people do not want any sort of slur or disregard to the Hero by the Countrymen or by the Government or by any Institution.

14. That it is further stated that it was revealed that the Government of India neither extended full co-operation in matter of despatching the documents or records relating to the enquiry on alleged death of Netaji in Plane Crash on 18.8.1945 nor the said Government obeyed or followed the provision of the Public Records Act, 1993 and utterly violated the prescribed procedure for keeping public record and brushed aside the liability and accountability for the maintenance of the public records like Netaji Subhas Chandra Bose by merely filing an affidavit in this regard before the Mukherjee Commission. No explanation was given regarding cause of destruction and by whose order the said sensitive file was destroyed, and when it was destroyed and why the Master file was not preserved and why the only file of Netaji Subhas Chandra Bose was destroyed etc. and the Government mysteriously and deliberately silent for political motivation. Therefore, it is clearly evident that the

Government has acted absolutely against the public interest and/or public good for which the concerned officials of the said Department are required to be suitably dealt with in accordance with law for gross negligent and dereliction of duty. It is, in fact, a contemptuous conduct and/or treacherous activities with the people at large as well as the Nation.

15 That it is further stated that the Right to Information Act, 2005 in conjunction with Fundamental right enshrined under Article 19(1)(a) of the Constitution of India have strengthened the rights to information from the Government and/or public bodies by virtue of provisions of the said statute and thus, the petitioners are entitled to know whether the Government had/has stopped the said wasteful expenditure for Renkeji Temple in Japan with regard to alleged death of Netaji and further wanted to know whether the Government has decided to place the said report of Mukherjee Commission for open debate before the members of the Parliament. The petitioners though sent the representation dated 27.9.2006 in detail to the concerned respondents seeking immediate stopping of said wasteful expenditure and to place the said

report of Mukherjee Commission for open debate before the members of the Parliament. The petitioners though sent the representation dated 27.09.2006 in detail to the concerned Respondents seeking immediate stopping of said wasterul expenditure and to place the said report before the members of the Parliament but till date no reply is discerenible from any corner or end.

The Xerox copy of the said representation dated 27.09.2006 in this regard is enclosed herewith and marked P-3 as Annexure P-3.

16. That it is further stated that Netaji Subhas Chandra Bose, the National Hero of our country having international ^{fame etc} importance and/or recognition is neither confined to only " Bose Family" nor is confined to any " Geographical limit" nor could be claimed as personal propoerty, rather Netaji is claimed to be the beloved leader and brave son of mother India and is concerned for the all and sundry of the Nation. Therefore, any personal claim from any corner to Netaji Subhas Chandra Bose ^{is required to} be unhesitatingly ignored or overlooked for the interest of the Nation. Now the prestige, dignity and status of Netaji are the concerned

/ for all the citizens of India and thus, the Respondent no.5 cannot claim absolute rights to continue such purportive research works, which is denegrating or lowering down the prestige, dignity and honour of the world famous national hero Netaji Subhas Chandra Bose. Therefore, as citizens of India the petitioners alongwith others raise the voice of protest to the said ^{conniving} ~~conductive~~ act or activities.

17. That it is further stated that the Government of India at the present wants to hand over the alleged ashes of Netaji Subhas Chandra Bose kept in the Renjoji Temple in Japan for about 60 years to Ms. Anita Das, daughter of Netaji and further desire to settle the disputes in this way and the Government of Japan was also persistently
 / pressurising the Government of India as alleged for which the apparent solution to be taken and unless and until the said alleged ashes is handed over, the Government would bear the maintenance cost of the said temple. The said News was published in the Anandabazar Patrika dated
 / 07.12.2006 wherein it was also inter alia firstly contended
 -d that the Government of India would bear the major part

of the maintenance and other related expenditure and in this regard the Japan Government would be assured very shortly and further necessary money would be given to Trust, ^{which is} under the main priest of Renjoji Temple and secondly it was contended that the permission would be given to hand over the said alleged ashes to Ms. Anita Pap if she wants to take the same.

The Xerox copy of the News paper cutting containing the said news published in the Anandabazar Patrika dated 07.12.2006 is annexed herewith and marked with the letter

P-4. P-4.

18. That the petitioners apprehend that the Government of India due to pressure given by the Government of Japan to take back the alleged ashes kept in Renkuji Temple at Japan has decided to bring back the said alleged ashes to India and full preparation for bringing and staking the same ^{be taken} in India, ^{Hence,} very shortly. ^{is urgently required} ~~Had~~ an interim order, to restrain the authorities of Government of India from accepting the said alleged ashes and staking the same till the disposal of the instant writ application.

19. That being aggrieved by and dissatisfied with the apathetic, deliberate and wilful attitude of the

Government of India towards Netaji Subhas Chandra Bose and for incurring huge amount of public money from the Government Exchequer for preserving and reserving the so-called ashes of Netaji allegedly kept in the Renjoji Temple in Japan and also for not placing the report submitted on 08.11.2005 by Mukherjee Commission for open debate or discussion before the members of the Parliament, beg to move this instant application on the following amongst other

G R O U N D S :-

- I. FOR THAT the Respondents acted illegally, arbitrarily, discriminatorily and whimsically inclining to incur huge amount of public money from the Government Exchequer for the maintenance of Renjoji Temple in Japan to keep the alleged ashes of Netaji Subhas Chandra Bose who allegedly died on 13.03.1945;
- II. FOR THAT the Respondent concerned when inclined to uphold the earlier two Committee and Commission reports in this regard, further notification of Commission of Inquiry for the same reason was uncalled for and to camouflage the

:- 29 -:-

People with a view to
neutralise the public commotion;

III. FOR THAT the Respondents concerned ought to have given much more weightage or importance on Mukherjee Commission since the said Commission was constituted by the order of the Hon'ble High Court, Calcutta passed on 30.04.1998 in W.P.No. 231 of 1998 and the name of the Chairman of Commission of Inquiry was given by the Chief Justice of the Hon'ble Supreme Court of India and the Commission was constituted accordingly, whereas the other two Committee and Commission were not constituted by the judicial intervention, however, the Government of India did not accept report submitted by the Mukherjee Commission and without assigning any reason the same was cancelled / rejected;

IV. FOR THAT the concerned Respondent is arbitrarily and illegally spending public money from the Government Exchequer for patronising or encouraging the research works on the alleged death of Netaji Subhas Chandra Bose claiming to have taken

place on 18.03.1945 as such the said expenditure for
^{Continuation}
~~Constitution~~ of research work incurred for the
Respondent no.5 in the name of Netaji Research
Bureau be stopped forthwith ;

V. FOR THAT since the Government money is the public
money, there should be an accountability before the
citizens of India with regard to any such expenditure
with political motivation on the Netaji Subhas
Chandra Bose, which is against the public interest
or public policy or public good ;

VI. FOR THAT without any formal declaration of death of
Netaji any attempt to spend further amount for
maintenance of Renjoji Temple in Japan allegedly
keeping the ashes of Netaji and after submission of
report of Mukherjee Commission, is absolutely
derogatory and vile conduct on the part of the
Government as such the said conduct is depreciatory
and disparaging too ;

VII. FOR THAT the Respondent concerned ought to have placed the Commission Report submitted by the Hon'ble Justice Manoj Kumar Mukherjee (Retired) on 03.11.2005 before the members of the Parliament for open debate or discussion, otherwise it would carry a wrong message to the public and for the reason of withholding the said report for open debate, reliance or credence of the public upon the Government of democratic set up would be declined to a great extent ;

VIII. FOR THAT the citizen has the right to know how much amount of public money was incurred till date to preserve and reserve and/or for the purpose of the maintenance of the Renjoji Temple allegedly keeping the ashes of Netaji Subhas Chandra Bose due to alleged death of Netaji on 13.03.1945 and such right has been strengthened for enactment of right to Information Act, 2005 and thus, as the citizen of India the petitioners are entitled to know such quantum of said wasteful expenditure for Netaji's ~~ashes~~ alleged ashes;

IX. FOR THAT in any view of the above matter the conduct of the Respondent concerned are not above board in all respects ^{as} ~~where~~ greater public interest is involved and , thus, ~~be~~ in law and liable to be interfered with by this Hon'ble court.

20. That since our Government is democratic Government, in that view a duty has cast upon the Government to honour the public sentiment relating to the said National issue and all the citizens are concerned for the same and in such a situation the Government is required to unhesitatingly unveil their stand on the National Hero Netaji to put a permanent end of the said National issue, which was the only and/or sole object of the Mukherjee Commission.

21. That it is further stated that no other writ petition was filed by the petitioners on the self-same cause of action in this Hon'ble court or anywhere.

22. That the records are located in the ordinary original civil Jurisdiction of this Hon'ble court and direction may be given to the Respondents concerned to produce all relevant records relating to mysterious death of Netaji Subhas

Chandra Bose and previous enquiry reports in this regard including the representation and notification as stated hereinabove at the time of hearing of this writ petition.

23. That there is no other alternative suitable
/ efficacious legal remedy open to your petitioners to seek
/ ~~remedy~~ save and except filing the writ petition for remedy
/ and, if any relief be given, the same to be adequate and
complete relieves.
24. That the application is made on good faith and to
secure the ends of justice.

Under the above facts and circumstances,
it is prayed that your Lordships may be
graciously pleased to issue :-

a) A writ and/or writs in the nature of
Mandamus commanding the Respondents,
their men, agents, sub-ordinates,
superiors, successors-in-office to
refrain from incurring further public
money from Government Exchequer for
maintenance and upkeeping of the Renkoji

(1) Temple in Japan allegedly keeping the
ashes as that of Netaji Subhas Chandra
Bose who allegedly died on 18.08.1945
forthwith ;

(2) b) A writ and/or writs in the nature
of Mandamus commanding the Respondents
concerned, their men, subordinates,
superiors, successors-in-office to
place the Commission report submitted
by the Hon'ble Justice Manoj Kumar
Mukherjee (Retired) on 08.11.2005
before the Members of Parliament for
open debate or discussion immediately;

c) A writ and/or writs in the nature
of Mandamus directing the Respondents
concerned refrain from incurring any
amount for the Respondent No.5 from
public Exchequer to continue research
work on any issue pertaining to Netaji
including the alleged death of Netaji
Subhas Chandra Bose ;

d) A writ of and/or writs in the nature of Certiorari directing the Respondent concerned to transmit and certify all relevant records relating to Enquiry on the alleged death of Netaji on 13.03.1945 allegedly took place in Plane Crash in Taihoku, Japan including the representa-
/ tions being Annexure - "P/3" and the
/ notification being the Annexure - "P/2"
at the time of hearing of the writ
petition and so as to render the
conscionable justice after perusing the
same ;

e) A writ and/or writs in the nature of
[Prohibition forbidding the Respondents
nos. 1 to 4 from incurring any amount
of public money from public Exchequer for
preservation and reservation and/or
maintenance of Wenkoji Temple, Japan
allegedly keeping the ashes of Netaji

allegedly died on 18.08.1945 till the disposal of this writ petition ;

f) Rule Nisi in terms of prayers (a), (b), (c), (d) and (e) as aforesaid ;

g) An ad-interim order restraining the concerned Respondent from taking any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple at Japan till the disposal till the disposal of the instant application

h) Any other or further writ or writs, order or orders, direction or directions as your Lordships may deem fit and proper.

And you petitioners, as in duty bound shall ever pray.

AFFIDAVIT

I, Ashim Kumar M Ganguly, Son of Late Netai Chandra Ganguly, aged about 45 years, by religion Hindu, by profession - lawyer, residing at 90, A. K. Mukherjee Road, 3rd Floor, Police Station Baranagar, Kolkata - 700090, do hereby solemnly affirm and declare as follows:-

1. That I am the petitioner No. 1 of this instant Writ petition as such conversant with the facts and circumstances of the case.
2. That the statements made in Paragraph No. 1, 2, 3 (Part), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 are true to my knowledge and the statements made in Paragraph No. 1, 2, 3 (Part), 4, 1, 18 are true to my information derieved from the relevant records which I veriiy believe to be true and rest are my humble submission before this Hon'ble Court.

Prepared by me in my office.

The deponent is known to me.

Sd/- Ashim Kumar Ganguly,
 Petitioner-in-person.

Abolus Salam,
 Clerk to Mr.....

Advocate,

Solemnly affirm before me

this...! 5th! day of December, 20006.

COMMISSIONER OF OATH,

:: AFFIDAVIT ::

I, Subhash Chandra Basu, Son of Late Surendra Nath Basu, aged about 41 years, by religion Hindu, by profession - lawyer, residing at 86, Sadar Boxi Lane, Post and Police Station, and District - Howrah, Pin code : 711101, do hereby solemnly affirm and declare as follows:-

1. That I am the petitioner No. 2 of this instant Writ petition as such conversant with the facts and circumstances of the case.

2. That the statements made in Paragraph No. 1, 2, 3 (part), 5, 6, 7, 8, are true to my knowledge and the statements made in Paragraph No. 1, 3 (part), 4, 18, are true to my information derieved from the relevant records which I verily believe to be true and rest are my humble submission before this Hon'ble Court.

Self Subhash Chandra Basu

Prepared in my me in my Office. The deponent is known to me.
Self- Subhash Chandra Basu Clerk to Mr. A. Banerjee.
Petitioner-in-person. Advocate.

22
Solemnly affirmed before me
this 15th day of December, 2006.

COMMISSIONER OF OATH.

Mukherjee Commission

From Wikipedia, the free encyclopedia

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The **Mukherjee Commission** refers to the one-man board of Mr. Justice Manoj Mukherjee, a retired judge of the Supreme Court of India which was instituted in 1999 to enquire into the controversy surrounding the reported death of Subhas Chandra Bose in 1945.

On April 30, 1998 that the High Court of Calcutta gave orders to the then BJP-led Government to "launch a vigorous inquiry as a special case for the purpose of giving an end to the controversy".^[1]

The purpose of the commission was to ascertain the following:

1. Whether Netaji Subhas Chandra Bose is dead or alive;
2. If he is dead whether he died in the plane crash, as alleged;
3. Whether the ashes in the Japanese temple are ashes of Netaji;
4. Whether he has died in any other manner at any other place and, if so, when and how;
5. If he is alive, in respect of his whereabouts.

The commission is also the first to probe into the much publicized Soviet-connection. The basics of which are that Netaji Subhas Chandra Bose did indeed survive the end of the Second World War, and detained in a Siberian camp in the late 1940's. A former Russian General swore under oath to the commission that he had seen a true Soviet-cabinet paper detailing and discussing a "living" Subhas Chandra Bose, one year after his supposed death.

Many, however, feel that with a new Congress controlled government now in power, the commission's results may be undermined. Many conspiracies abound, and many contain specific details that are damaging to the Congress Party and Indian Prime Minister Jawaharlal Nehru.

Three researchers who helped find the declassified documents in the military archives of Paddolsk, Russia, Purabi Ray, Hari Vasudevan and Shobanlal Dutta Gupta, have also reported threats from unidentified persons upon their lives, if they did not stop their research. Many files and documents by the Union Home Ministry have been deemed a risk to national security and under Sections 123 and 124 of the Evidence Act and Article 74(2) of the Constitution of India, have not been disclosed to the commission.

The Mukherjee Commission is also not the first commission created to ascertain the death of Netaji Subhas Chandra Bose. The two previous commissions were the Shah

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(87)

Newaz Commission (appointed by Jawaharlal Nehru) and The Khosla Commission respectively. The Khosla Commission, created by the government of Indira Gandhi (daughter of Jawaharlal Nehru), reported that all documents relating to Prime Minister Nehru and the reports of Netaji Subhas Chandra Bose were either missing or destroyed.

[edit] Govt of India rejects Mukherjee Commission report

The Mukherjee Commission report was tabled in the Parliament of India on May 17, 2006. The report said that Netaji did not die in the alleged air crash of 1945 and the ashes at the Renkoji temple are not his ashes. The report also did not comment on Netaji's alleged stay in Russia after 1945 and called for further investigation into the matter. However, the report said that Netaji could be presumed to be dead today.

The Govt of India has rejected the findings of the Commission, saying that it did not agree with the findings.

[edit] Mukherjee Commission report submitted

The Death of Netaji remains a mystery. No one cooperated in the investigation and consequently the JMC of enquiry was forced to submit its unfinished work to the home minister Shivraj Patil. The main reason for this is the non-cooperation shown by the home ministry. The dissatisfaction caused resulted in Justice Mukherjee sending the report through his secretary rather than submit it in person.

During the whole tenure of the investigation, only one country, Taiwan has shown any real cooperation. Even the Govt of India refused to share some important intelligence files under the pretext of them being sensitive. The GoI will be tabling this report along with the ATR to the parliament. At the moment the home minister has passed on this 500 page report to the CS division of the ministry for scrutiny.

Subrata Bose, who was present in all the international trips made by the JMC has said that apart from Taiwan, no other country has shown any cooperation. On the basis of the information available from Taiwan it is now confirmed that no air-crash took place on 18th August 1945 which could have killed Netaji as previously propagated.

The commission had tried to uncover facts from trips to Japan, Taiwan and Britain. The UPA govt has permitted the commission to visit Russia. Bose said that Russia too did not cooperate in this investigation. Officials in Russia had said that files were present in the former KGB archives but the commission was not even allowed to visit the archives. The hostile posture of the British, Japanese and Indian governments is intriguing and seems to strongly point to an international conspiracy. In any case it is clear that Netaji Bose was seen in Russia in 1946. Lately American state department has sent information to the commission which corroborate the fact that no aircrash

41 92 88 83
took place in Taiwan. The request for intelligence papers from the Govt. of India elicited the official response that they cannot be opened as they are of a highly sensitive nature that may jeopardise international relations between India and some of its friend nations.

The JMC commission was formed by the former NDA Government to investigate the mystery surrounding Netaji's death at the end of world war II. The only kindness shown by the UPA Govt was to extend the commission's tenure by 6 months - from May 2005 to 14th November 2005. But the commission has now submitted its report to the Govt before the end date.

[edit] External links

<http://www.rashtriyasahara.com/20051109/National.htm#2005110984>

INdians for Action - No. 1 site on the Netaji disappearance case

<http://www.indiansforaction.com>

Mission Netaji - Committed to find the truth behind the disappearance of Netaji

<http://www.missionnetaji.org>

Post Mukherjee Commission News Updates http://www.geocities.com/aug_18_1945/

May 17th, 2006. Mukherjee Commission report made public by the Indian Government along with the Government's criticism.

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 14.5.99

S.O.339(E) - Whereas the Shah Nawaz Khan Committee and the Khosla Commission of Inquiry appointed by the Government of India in April, 1956 and July, 1970 respectively to inquire into and to report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok about the 16th August, 1945, his reported death as a result of an aircraft accident, and subsequent developments connected therewith had come to the conclusion that Netaji Subhas Chandra Bose met his death in an air crash;

And, whereas there is a widespread feeling among the public that the issue of finding the truth about Netaji's death still remains;

And, whereas there has been a consistent demand for a further inquiry into the matter;

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And, whereas the Calcutta High Court also directed the Government of India for a vigorous inquiry in accordance with Law, if necessary, by appointing a Commission of Inquiry for the purpose of giving an end to this controversy;

And, whereas a Motion was adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand has been made for a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose;

And, whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose in 1945;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Mr. Justice M.K.Mukherjee, a retired Judge of the Supreme Court of India.

2. The Commission shall inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

3. The Commission shall also examine the manner in which the exercise of Scrutiny of Publications touching upon the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.
4. The Commission shall submit its report to the Central Government as soon as possible but not later than six months from the date of publication of this notification.
5. The headquarters of the Commission shall be at New Delhi, and/or any other place as determined by the Commission.
6. The Central Government is of the opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the said Commission and the Central Government in exercise of the powers conferred by sub-section (1) of the said section 5, hereby directs that all the provisions of the said sub-sections (2) to (5) of that section shall apply to the Commission.

Sd/-

(NIKHIL KUMAR)
SPECIAL SECRETARY (ISP)

45

SPEED POST WITH A/D.

FROM: SRI ASHIM KUMAR GANGULY
90, A.K. Mukherjee Road,
3rd floor, Kolkata - 700090
-And- Ph: 2531-1861

SRI SUBHASH CHANDRA BASU
86, Sadar Boxi Lane,
Howrah - 711101.
Ph: 2640-1217

To

Date: 27.09.2006.

1. The Hon'ble Prime Minister,
Government of India, Office of Prime Minister,
7, Race Course Road, New Delhi - 110003
2. The Hon'ble Minister of Foreign Affairs,
Government of India, New Delhi:
3. The Hon'ble Minister for Home Affairs,
Government of India, New Delhi:
4. The Hon'ble Minister of Parliamentary Affairs,
Government of India, New Delhi:

Sir (s),

With deep sense of regards being the responsible citizen we felt it necessitated to put forth the following points for your immediate intervention so as to bring the people of India into confidence into the question of alleged death of the National Hero Netaji Subhas Chandra Bose and put an end to the same:-

1. It is a matter of great ^{importance} that the Government of India has not accepted the reports made by the Netaji Enquiry Commission namely Justice Monoj Mukherjee Commission set up by the Government of India and placed the report before parliament for discussion at great length.
2. The apathetic attitude of the Government of India in not accepting the report and placing the same before the Parliament has widely been circulated in the leading News papers in the country and also echoed the same through the Electronics media, which made furore in the mind and sentiment of the public at large throughout the breadth and length of our country.
3. It will not be exaggeration to enunciate that the Justice Monoj Mukherjee Commission was set up by the Solemn order of the Hon'ble High Court at Calcutta passed in the case of Ashim Kumar Ganguly - Vs - Union of India and Ors. being W.P.No.1805 of 1997 and also following an unanimous motion adopted on 24.12.1998 by the West Bengal Legislative Assembly, Government of West Bengal, and then the Chief Justice of the Hon'ble Supreme Court of India selected name of Hon'ble Justice Monoj Kumar Mukherjee (Retired) of the Hon'ble Supreme Court of India and ultimately it was constituted in 1999.

4. As per the terms of reference the Commission was constituted to find out the clue of mysterious disappearance of Netaji Subhas Chandra Bose and/or unearth whether Netaji Subhas Chandra Bose died in alleged Plane crash that took place at Taihoku (now Taipei) in Taiwan (formerly Formosa) on 18th August, 1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan as that of Netaji Subhas Chandra Bose or not.

5. Can it not be emphatically demanded that it is the duty of all citizens to know the cause of death and/or place of death if it really happens of such national leader and hero unlike Subhas Chandra Bose. The doubts have concretised in the minds of all Indians about such alleged reporting of death news of Netaji Subhas Chandra Bose and also alleged ashes staked in the Renkoji Temple since the earlier two attempts made by the Government of India to find out the aforesaid queries by setting up Shah Nawaz Inquiry Committee in 1956 and by Khosla Commission in 1970 which failed to achieve the credence of the public at large. Furthermore, the then Hon'ble Prime Minister Morarji Desai on August, 1978 declined to accept the said two earlier Committee and Commissions' report on Netaji Subhas Chandra Bose and cancelled the same while sitting in the Parliament.

6. Therefore, considering the above facts the Hon'ble Mukherjee Commission was constituted through the judicial intervention and its sanctity and reliability are much more than that of the earlier two Committee and Commission in this regard and thus, the people of India have eagerly to accept the findings of Mukherjee Commission in as much as it was based on evidence and it will also reflect the complete light and clear vision and/or complete light in the matter of alleged demise of Netaji Subhas Chandra Bose, the National Leader of the country having national regard all over the country and Crowned with international honour over the world.

7. In this context the above undesired action of the Government of India rejecting the report of Mukherjee Commission is really shocking and heart-breaking for the people of India. The Government of India has ignored the strong public sentiments over the long cherished reserved issue, which is rared up or nurished

by the Government of India. It may cause volcanic eruption in future if such ignorance is continued. It is, therefore, necessary that the Government of India should raise to the occasion and to give proper regard to the sentiment of the people of the country.

8. It is further stated that the citizen has a right to know the reason of such unreasonable rejection of report of Mukherjee Commission and also not placing the same before the parliament for wide discussion is a drastic attempt of the Government to turn a deaf ear to the rights enshrined under Article 19 of the Constitution of India and the said right has been consolidated and codified by the Parliament of our country enacting the Right to Information Act, 2005 and therefore, under the above Constitutional provision and under the said codified Act the people are entitled to know the real reason for such hostile rejection of report. Therefore, the people want to know the reason of such rejection. The apathetic attitude of the Government has strengthened the doubts and causes serious consequences in the minds of the people at large.

9. It is further stated that the Government of India in earlier occasion made attempt to award posthumous "Bharatratna" to Netaji Subhas Chandra Bose and further attempt was made to bring the alleged ashes of Netaji Subhas Chandra Bose without any formal declaration of death of Netaji. The purported attempt were ultimately abandoned due to filing a Writ petition in the Hon'ble Supreme Court of India challenging such arbitrary, whimsical and irrational decision of the Government of India. Till date the Government of India has neither declared the date of death of Netaji Subhas Chandra Bose nor abandoned the wasteful expenditure of Government exchequer for maintaining the temple at Renkoji ~~temple~~ in Japan to keep the alleged ashes of Netaji Subhas Chandra Bose. This decision for bearing the cost for such maintenance is nothing but national wastage of public money from exchequer for which the Government is questionable before the public at large with regard to such unwarranted and undesirable expenditure. Moreover, it is an absolute non-democratic decision of the democratic ^{or Govt of the} country where the more than 60% people live below the poverty line. Thus, it is required to be immediately stopped the said expenditure for the interest of the nation. The exordium in this regard is totally unsustainable and not praiseworthy.

9. The people of this country share a common view that Netaji

Subhash Chandra Bose would be given honour much from the core of hearts if any real attempt is made to find out the clue of alleged death of Netaji Subhash Chandra Bose and immediately if the said expenditure is discontinued and no attempt be made to maintain the said temple cost unless there was/is a formal declaration of death to that effect. The report of the Justice Mukherjee Commission opined that the ashes kept in the Renkoji Temple in Japan is not of Netaji Subhas Chandra Bose.

Under the above facts and circumstances you are requested to immediately stop the expenditure for the maintenance of the so-called ashes kept in the Renkoji Temple at Japan and inform the applicants forthwith the reason for such rejection and/or non-acceptance of report of Mukherjee Commission within 10 days failing which the undersigned will have no other alternative except to knock at the door of the temple of justice for seeking appropriate order from the Hon'ble Court.

An early reply to the context of the instant appeal will be appreciated and also may restrain the hands of the undersigned to move further.

Yours faithfully,

Ashim Kumar Ganguly
1. (Ashim Kumar Ganguly)

Subhash Chandra Basu
2. (Subhash Chandra Basu)

10/11/81

From: SUBHASH CH BASU, NEW-1

To: NEW DELHI, PIN: 110016

At: 3:30 PM

At: 3:30 PM

Taxes: Rs. 4.00 (Have a nice day)

At: 3:30 PM

भारतीय डाक
INDIA POST

From: SUBHASH CH BASU, NEW-1

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At: 3:30 PM

Taxes: Rs. 4.00 (Have a nice day)

At: 3:30 PM

ভারতে সর্বাধিক প্রচারিত প্রথম শ্রেণির বাংলা দৈনিক

আনন্দবাজার পত্রিকা

সদস্যবাজার পরিচালনা

পত্রিকা

সেরা পাত্রের ঠিকানা : সেরা পত্রীর ঠিকানা

কলকাতা ২১ অগ্রহায়ণ ১৪১৩ বৃহস্পতিবার ৭ ডিসেম্বর ২০০৬ শহর সংস্করণ ২.৫০ টাকা

১৪ পাতা

CL

চিতাভস্ম নেতাজি-কন্যাকে দিয়ে বিতর্ক মেটাতে চায় কেন্দ্র

অগ্নি রায় • নয়াদিল্লি

৬ ডিসেম্বর: বিতর্ক এড়াতে, রেনকোজি মন্দিরে গত ষাট বছর ধরে রক্ষিত চিতাভস্ম নেতাজি-তনয়ার হাতে তুলে দিতে চাইছে মনমোহন সরকার।

জাপান সরকারের চাপের মুখে কেন্দ্রের সূত্র, চিতাভস্ম তুলে দেওয়া হোক নেতাজির কন্যা অনিতা পাকের হাতে। আর যত দিন না এই হস্তান্তর হচ্ছে, তত দিন ভারত চিতাভস্ম রক্ষণাবেক্ষণ ব্যয়ের বড় অংশ বহন করবে।

নয়াদিল্লির অনুমান, প্রধানমন্ত্রী মনমোহন সিংহের আসন জাপান সফরে ওই চিতাভস্ম নিয়ে নতুন করে কূটনৈতিক চাপ তৈরি করবে টোকিও। সেই কারণেই এই স্পর্শকাতর বিষয়টিতে সব দিক বাচিয়ে এগোতে চাইছে দিল্লি। তাই এমন সূত্রের কথা ভাবা হয়েছে,

যাতে নেতাজি নিয়ে আবেগের আওনে ঘূতাহতি না পড়ে এবং রাজনৈতিক বিরোধের সভাবনা তৈরি না হয়।

প্রধানমন্ত্রীর জাপান সফরে রেনকোজি মন্দির দর্শনের কর্মসূচিও রাখা হয়নি। বিদেশমন্ত্রী প্রণব মুখোপাধ্যায়ের বক্তব্য, “রেনকোজি যাওয়ার পরিকল্পনা রাখিনি। তার পরেও যদি ওঁরা অনুরোধ করেন, তখন দেখা যাবে।” এর থেকে স্পষ্ট যে, রেনকোজি মন্দিরে যাওয়া করে ফুল দিয়ে দেশে কোনও রকম বিতর্ক ডেকে আনতে চাইছে না মনমোহন সরকার।

মুখার্জি কমিশনের রিপোর্ট সংসদে পেশ হওয়ার পর পরিস্থিতি আরও জটিল হয়েছে বলে মনে করছে বিদেশ মন্ত্রক। পাঁচ বছর অনুসন্ধান ও গবেষণার পর কমিশনের বক্তব্য, নিম্নান দুর্বিনায় মারা যাননি নেতাজি সুভাষচন্দ্র বসু। রেনকোজির চিতাভস্মও তাঁর নয়।

কমিশন বলেছে, নেতাজি আজ আর বেঁচে নেই। বয়সের কারণেই সেটা সম্ভব নয়। তবে কবে কী ভাবে তাঁর মৃত্যু হয়েছে, সে সম্পর্কে স্পষ্ট ব্যাখ্যা দিতে পারেনি কমিশন। বলা হয়েছে, এ ব্যাপারে কোনও সঠিক প্রমাণ তাদের কাছে নেই। নেতাজি-বিশেষজ্ঞদের মতে, এর ফলে বিষয়টি নিয়ে জটিলতা আরও বেড়েছে বই কমেনি।

এই পরিস্থিতিতে নয়াদিল্লি পর্যায়ক্রমে দু'টি সমাধান সূত্রের কথা ভেবেছে। প্রথমত, রেনকোজিতে যত দিন ওই বিতর্কিত চিতাভস্ম থাকবে, তার রক্ষণাবেক্ষণ ও আনুষঙ্গিক ব্যয়ভারের একটি বড় অংশ

বহন করবে ভারত। এই ব্যাপারে জাপান সরকারকে শীঘ্রই প্রতিশ্রুতি দেওয়া হবে। রেনকোজির প্রধান পুরোহিতের অধীনে যে



ট্রাস্ট আছে, সেখানেও প্রয়োজনীয় অর্থ দেবে নয়াদিল্লি। দ্বিতীয়ত, নেতাজি-কন্যা অনিতা পাক সেই চিতাভস্ম নিতে চাইলে তাকে তা দেওয়ারও অনুমতি দেওয়া হবে। সেই ভস্ম তিনি জার্মানিতে নিয়ে যাবেন, না কলকাতায় নেতাজি সংগ্রহশালার রাখবেন, সেই সিদ্ধান্তও একান্ত ভাবে তাঁরই হবে। এ ব্যাপারে কোনও

ভাবেই নাক গলাবে না ভারত। যেটা স্পষ্ট, এই কূটনৈতিক দায় নিজের

ঘাড়ে রাখতে চাইছে না নয়াদিল্লি। আর তাই এই সূত্রের মাধ্যমে এক দিকে যেমন জাপানের চাপ সামাল দেওয়া যাবে, অন্য দিকে তেমনই ওই চিতাভস্মকে ভারত স্বীকৃতি দিল কি দিল না, তা নিয়ে অসন্তোষের অবকাশও থাকবে না।

নরসিং রাওয়ের সরকারের সময় বিষয়টি নিয়ে যে তীব্র অভিজ্ঞতা হয়েছিল, তার থেকে শিক্ষা নিয়েই সরকার। তদানীন্তন সরকারের মতামত ছিল, দেশের সংখ্যাগরিষ্ঠ মানুষ চান, ওই চিতাভস্ম ভারতে নিয়ে আসা হোক। তখনও বিদেশমন্ত্রী ছিলেন প্রণববাবুই। তাঁকে জার্মানিতে পাঠানো হয়েছিল নেতাজির স্ত্রী ও কন্যার মতামত নিতে। তাঁরা জানিয়েছিলেন, সদস্যমানে যদি চিতাভস্ম নিয়ে আসা হয়, তবে আপত্তির কোনও কারণ নেই। এর পরে প্রণববাবু জাপানে গিয়ে রেনকোজি মন্দির পরিদর্শন করেন। বিষয়টি নিয়ে পশ্চিমবঙ্গে

তুমুল রাজনৈতিক বিরোধ শুরু হয়। নেতাজির বিবাহ এবং মৃত্যুর তথ্যে অবিশ্বাসী ফরওয়ার্ড ব্লক নেতারা প্রতিবাদ জানাতে থাকেন। তাতে যোগ দেন মমতা বন্দোপাধ্যায়ও (তিনি তখন কংগ্রেসেই ছিলেন)।

জাপান সরকারের তরফেও বারবার প্রশ্ন তোলা হয়েছে, ভারতের এত বড় নেতার শেষ স্মৃতিচিহ্নটুকু কেন ফিরিয়ে নেওয়া হবে না? এমন কী, এ কথাও বলা হয়েছিল, অনুমতি পেলে নিজের খরচে জাপান সেনা সদস্যমানে সেই চিতাভস্ম ভারতে নিয়ে যেতে পারে। কিছু দিন আগে সুগেনামির (যে এলাকায় ওই মন্দির) মেয়র কলকাতায় এসে একই প্রশ্ন তুলেছিলেন নেতাজির পরিবারের কাছে।

দিল্লি মনে করছে, চিতাভস্ম নিয়ে এই সার্বভৌম জটিলতা এ ব্যয় কাটিয়ে ওঠা সম্ভব হবে এই সমাধান সূত্রের মাধ্যমে।

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DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

W.P. NO. 27541 (W) OF 2006.

IN THE MATTER OF:

An application under Article 226
of the Constitution of India;

-And-

IN THE MATTER OF:

SRI ASHIM KUMAR GANGULY & ANOTHER.

-VERSUS- PETITIONERS.

UNION OF INDIA AND OTHERS.

.... RESPONDENTS.

"P E T I T I O N"

ON-RECORD:

SRI SUBHASH CHANDRA BASU

Petitioner-in-
person.

Address: 86, Sadar Boxi Lane, Post
Office, Police Station and
District - Howrah, Pin: 711001

Phone : 2640-1217.

108 96 94
DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

IN THE MATTER OF:

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IN THE MATTER OF:

SRI ASHIM KUMAR GANGULY AND ANOTHER.

..... PETITIONERS.
-VERSUS-

UNION OF INDIA AND OTHERS.

..... RESPONDENTS.

21 SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONERS;

I, SUBHASH CHANDRA BASU, Son of Late Surendra Nath Basu,
aged about 42 years, by religion Hindu, by profession - Lawyer,
residing at 86, Sadar Buxi Lane, Post Office, Police Station and
District - Howrah, Pin Code : 711101, do hereby solemnly affirm
and declare as follows:-

1. That I am the petitioner No.2 of this instant Writ Petition
as such I am well conversant with the facts and circumstances of
this case.

contd...2

2. That the petitioners filed this Writ Petition based on some ~~law~~ and Factual aspects relating to earlier and present facts or events, which were adequately pleaded in the Writ Petition filed by the petitioners ^{concerning to stop} ~~relating to stopping~~ of all expenditures for alleged maintenance and upkeeping the Renkoji Temple in Japan, where the alleged ashes of Netaji Subhas Chandra Bose allegedly claimed to have been kept. The petitioners inadvertently and for some other unavoidable reasons failed to annex those documents on the said factual aspect but the same are required to be enclosed for proper adjudication or arrive at final conclusion and/or better appraisal ^{of} factual aspect. Hence, the relevant documents are enclosed and/or relevant portion of some statements are quoted in the succeeding Paragraphs. It is further stated that by enclosing those documents or quoting some portion of the statement the petitioners do not want ~~to~~ to change the earlier pleading or ~~averments~~ ~~statements~~ and thus, such enclosures or portion of the statements are required to support or supplement the earlier ~~averments~~ of pleadings and those are also for the ends of justice.

3. ~~That~~ With reference to Paragraph No.2 and 3 of this Writ Petition the petitioners have made the averments that the Petitioner No.1 on the earlier occasion had filed a Writ Petition being W.P. No. 1805 of 1997 in this Hon'ble High Court challenging

contd...3

the Government's arbitrary decision for bringing the alleged
 Q. / ashes of Netaji Subhash Chandra Bose from Renkoji Temple, Japan
 Q. / to our country and further sought for restraining the Government
 from taking such step unless satisfied about the genuineness of
 claim that the ashes kept at the Renkoji Temple of Japan are that
 of Netaji Subhas Chandra Bose and unless to take the people of
 India in confidence.

The xerox copy of the order dated 07.04.1998, which speaks
 for itself, passed in W.P. No. 1805 of 1997 by the Hon'ble Justice
 Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice
 Barin Ghosh as their Lordship then were, is enclosed herewith
 and marked as Annexure - P/5.

4. With reference to averments made in Paragraph No.3 of
 this Writ Petition, the petitioners referred another Writ Petition
 Q. / being W.P. No. 281 of 1998, which was ~~also~~ decided on 30.04.1998
 and it was reported in AIR 1999 Cal 9 (Rudra Jyoti Bhattacharjee -
 Q. / and rely upon
 Versus- Union of India). The petitioner crave leave to refer the
 Q. / order dated 30.04.1998 ^{which is} and reported in AIR 1999 Cal 9 and want to
 produce the said reported judgment at the time of hearing.

5. With reference to averments made in Paragraph No.4 of the
 Writ Petition, the petitioners want to rely and refer the conten-
 tion of appointment of Mukherjee Commission referred to as

Annexure - p/2 to the Writ Petition.

6. With reference to averments made in Paragraph No.5 of this Writ Petition concerning the Writ Petition, being Transfer Case (C) No. 7 of 1994 challenging therein the conferment of posthumous Bharat Ratna Award on Netaji Subhas Chandra Bose, the petitioners want to refer and rely upon the Judgment and Order of the Hon'ble Supreme Court of India in the said Writ Petition reported in the AIR 1997 SC 3019 (Union of India -Versus- Bijan Ghosh) at the time of hearing.

7. With reference to averments made in Paragraph No. 6 and 7 of this Writ Petition, ^{want to refer and rely upon the} the petitioners ^{the} "Conclusion", Chapter Five, at Page No. 123 of the Mukherjee Commission Report submitted on 08.11.2005 before the Government of India, ^{which} is enclosed herewith and marked as Annexure - P/6.

8. With reference to averments made in Paragraph No.8 of this Writ Petition, the petitioners state that though they have earlier adequately pleaded as to ~~the~~ holding of Shri Shaw Nawaz Committee and Khosla Commission, now the petitioners further want to refer and rely upon, Chapter One, Preamble, Page 1 and 2 of ~~the~~ ^{dated 08.11.2005} the Mukherjee Commission Report, relating to earlier appointment of a three-member Inquiry Committee vide reference ~~Max No. 30(26) FEA~~ No. F-30(26) FEA/56 dated April 5, 1956 headed by Shri Shaw Nawaz

contd...6

or/ Khan as Chairman ~~and~~ and the Inquiry Commission ~~was~~ constituted vide Notification No. 25/14/70-Poll.11 dated July 11, 1970 headed by Shri G.D.Khosla, retired Chief Justice of Punjab High Court, which were asked to inquire into the facts relating to disappearance of Netaji Subhas Chandra Bose and the Committee ^{report wherein} ~~(except)~~ Suresh Chandra Bose ^{submitted a dissentient report (report)} and the Commission which laid on the table of the House on 03.09.1974, come to the conclusion that Netaji Subhas Chandra Bose died in plane crash in Tokyo, Japan.

The xerox copy of the Chapter One, Preamble, Page No. 1 ^{08.11.2005} and 2 of the Mukherjee Commission Report dated ^{08.11.2005} is enclosed herewith and marked as Annexure - P/7.

The petitioners further want to refer and rely upon the report of Mukherjee Commission as to the statements of the then Prime Minister Shri Morarji Desai made on 28.08.1998 in the floor of the Parliament reported therein in the said said Report under heading (b) Its Limitation and Constraints (1) re: records/document in Point No.2.5, Page No. 13 and 14 and it was held that the Government find it difficult to accept that earlier conclusions are decisive.

The xerox copy of the Page No. 13 and 14 of the said Mukherjee Commission Report wherein the said statements of the then Prime Minister Morarji Desai are quoted, are enclosed herewith and marked as Annexure -P/8. collectively.

contd...7

Furthermore, with reference to averments made relating to ^{the petitioners want to say that the same} Action Taken Report (ATR) ^{reason} has been rejected on 17.05.2006 without assigning any report and without having any authority under the provisions of The Commission of Inquiry Act, 1952. The Government being the executing authority could either act upon the said report or not but in no circumstances, the Government is empowered to reject the Commission Report ~~on 17.05.2005~~ on 17.05.2005 in as much as it was constituted under Judicial intervention. Such rejection of Action Taken Report (ATR) ~~xxx~~ is absolutely illegal and without any authority of law.

9. With reference to averments made in Paragraph No.9 of ^{the petitioners further state the facts} this Writ Petition relating to Colonel Habibur Rahaman, who was the Co-passenger with Netaji Subhas Chandra Bose and he was present before Shah Nawaz Committee as Witness (SW-4) but neither he did appear before the Khosla Commission nor the the Government took any step to ensure his appearance before the said Commission as such ~~xxx~~ he was not testified by the said Commission. Furthermore, the said Committee and Commission never had gone to the place of alleged plane crash i.e. in Taihoku, Japan though the reports of the Committee and Commission were the main source or reason to ^{believe and} ~~for~~ confidence and belief of the Government of India and still ^{and clutch} ~~want to~~ cherish such belief.

contd....9

10. With reference to averments made in Paragraph No.14 of this Writ Petition, the petitioners further state that the Government of India utterly violated the provisions of the Public Records Act, 1993, 'the records of disappearance of Netaji Subhas Chandra Bose has got great national and international importance as such it should be kept in proper manner in accordance with law but, however, such records relating to "Investigation into the circumstances leading to the death of Subhash Chandra Bose" was destroyed on 06.03.1972 (Ref. File No. 12(226)/56-PM of the Mukherjee Commission Report). The said act of destruction of such Records of National and International importance is antinational activities and vindictive attitude and by way of such conduct the whole nation are made befooled and kept under the dark for a long time, which is the contribution of the Central Government. The xerox copies of Page No. 10 & 11 of Mukherjee commission report confirming the destruction of the said record of Netaji in 1972 are enclosed as Annexure - Pg. 6

11. With reference to averments made in other different Paragraph of this Writ Petition the petitioners, state that since repondents concerned have not filed their affidavit-in-Opposition as yet though there was a direction for the same on 05.01.2007, the Hon'ble Court may proceed with this Writ Petition holding that the factual averments made therein deemed

to have been accepted by the Government of India. The petitioners crave leave to refer and rely upon some decisions on this points of such acceptance at the time of hearing.

my 12. The petitioners submit that this Supplementary Affidavit may be treated as part of Writ Petition and it may be heard alongwith the main Writ petition.

or 13. That the statements made in Paragraph No. 1, 2, 3,
or are true to my knowledge and the statements
or made in Paragraph No. 4, 6, 7, 8, 9, 10, ... are true to my
information derieved from the relevant records which I verily
believe to be true and rest are my humble submission before
this Hon'ble Court.

Subhash Chandra Basu

Prepared in my office.

The deponent is known to me.

Subhash Chandra Basu
(Subhash Chandra Basu)
Petitioner-in-person.

Clerk to Mr.....

Advocate.

Solemnly affirm before me
this 28th. day of February,
2007.

COMMISSIONER OF OATH.

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N.P. 8114 No 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
~~Ordinary Original Jurisdiction~~
Original Side



12 AUG 13/1
Rajesh K. Ganguly
N.P. 1805-1997
31/07/98
13/8

Seal / 28-17-98

The Hon'ble The Chief Justice

And

The Hon'ble Justice

Barin Ghosh

President of the Union of India

In the Matter of : An application under Article 226 of the Constitution of India;

And

In the Matter of : Public Interest Litigation;

And

In the Matter of : A writ in the nature of Mandamus ;

And

In the Matter of : A writ in the nature of Certiorari ;

And

In the Matter of : Prohibition and/or any other such appropriate writ or writs, order or orders, direction or directions ;

And

In the Matter of : Investigation in connection with the ashes of Netaji Subhas Bose as declared and/or announced by the Govt. of India

And

In the Matter of : Inaction/non-action on the part of Govt. of India not having declared anything about the death of Netaji Subhas Chandra Bose before having taken any initiative to bring the ashes of Netaji Subhas Chandra Bose from Rencogi temple of Japan;

And

In the Matter of : Ashim Kumar Ganguly, son of Late Netaji Chandra Ganguly, residing at 23/A, Sib Krishna Da Lane, P.O. Kankurbachi, Calcutta- 700 054.

.... Petitioner

2.

Versus

1) Govt. of India, service through Secretary, Ministry of Defence, New Delhi, (2) Govt. of West Bengal, service through Secretary, Home Department, Writers' buildings, Calcutta-1 (3) Ministry of Human Research & Development having its office at New Delhi ; (4) Ministry of Home affairs, Govt. of India, having its office at North Block, Central Secretariat, New Delhi- 4; (5) Ministry of External affairs, service through the Secretary having its office at South Block, Central Secretariate, New Delhi.

..... Respondents

Upon reading a petition of Ashim Kumar Ganguly, abovenamed (hereinafter referred to as 'the said petitioner') and his affidavit in verification thereof affirmed on the twenty ninth day of August, one thousand nine hundred ninety-seven and the exhibits annexed to the said petition and marked respectively 'A' and 'B' all filed on the twenty ninth day of August, one thousand nine hundred ninety seven. And upon hearing Mr. Subrata Mukherjee (Mr. Rajesh Ganguly appearing with him) Advocate for the said petitioner and Mr. U.P. Mukherjee, Advocate for the respondents abovenamed and upon the Advocate for the respondent Union of India abovenamed echoing the observations made by the Supreme Court of India in (Union of India & Ors.-Vs.- Bijan Ghosh & Ors.) (1998 W.B.L.R. (SC) Page 9) stating before this court that, without there being a conclusive proof and/or otherwise determined in accordance with law the Union of India cannot accept that Netaji Subhas Chandra Bose

3.

also in Taiwan on eighteenth day of August, one thousand nine hundred forty five or at any later date and that the ashes which are said to be kept in the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and this court having no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose And it being difficult to accept that the Defence Minister of the Country has made a statement of such consequences as included in the said petition without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported And the said petitioner through the said petition now alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at the Kencogi Temple, Japan And in view of the assurance that nothing of the sort is likely to be done by the Government of India.

It is ordered that before accepting the ashes which are allegedly kept at the Kencogi Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence And it is further ordered that this matter is disposed of accordingly.

Witness: Shree Prabha Shanker Mishra, the Chief Justice at Calcutta aforesaid the seventh day of April in the year one thousand nine hundred and ninety-eight.

Gouranga Chatterjya..... Advocate.

Tapan Ch. Dutt..... Advocate.

S. Chatterjee..... Advocate.

P. Ghosh
03.8.98.
For Registrar.

G.B.

X.C.
C.M.

S.P. Ghosh

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No. 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA

~~Ordinary Original Civil Jurisdiction~~

Constitutional Writ Jurisdiction

Original Side

Ashim Kumar Ganguly

Union of India & Ors.

- (i) Date when the decree or order was completed
- (ii) Date of application for copy
- (iii) Date of receiving the requisite number of folios and stamp
- (iv) Date of delivery of the requisite folio and stamp
- (v) Date on which the copy is ready for delivery
- (vi) Date when delivery was taken of the copy by the applicant

12.8.98

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14.8.98

Order/Decree of the 7th April, 1998.

Filed this 10th

August, 1998.

day of

day of

K. Rakshit
Superintendent,
Order Department.

Superintendent,
Copyists' Department,
High Court, C. S.

Rajesh Kumar Ganguly
Advocate.

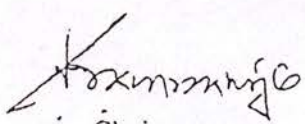
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings -- that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

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Chapter One

Preamble

The controversy over the death of Netaji Subhas Chandra Bose ('Netaji' for short), who needs no introduction, surfaced after the announcement from Tokyo on August 23, 1945 that Netaji had died in a plane crash on August 18, 1945. However, some press reports published from Tokyo and Taihoku (Taipei) had given contradictory versions. After independence of India, there was a popular demand for an inquiry into the alleged disappearance/death of Netaji. The issue was also raised in the Parliament from time to time. Responding thereto, the then Prime Minister on December 3, 1955, announced in the Parliament that an official committee would be appointed to go into the matter. Accordingly, the Government of India appointed a three-member Inquiry Committee, vide its Notification No.F-30(26)FEA/55 dated April 5, 1956, with Shri Sh. Nawaz Khan, Parliamentary Secretary to the Ministry for Transport and Railways, as its Chairman and Shri Suresh Chandra Bose, elder brother of Netaji and Shri S. N. Maitra, ICS, Chief Commissioner, Andaman & Nicobar Islands, as its members. The task of the Committee, as it appears from the Notification, was to inquire into and report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok on or about August 16, 1945 and his alleged death as a result of an aircraft accident and subsequent developments connected therewith. After considering the evidence collected by the Committee, two of

them (Shri Shah Nawaz Khan and Shri S.N.Maitra) came to the conclusion that Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member, submitted a dissentient report stating that there had been no plane crash involving Netaji's death. The majority report was accepted by the Government of India.

1.2 The majority view of that Committee, however, did not satisfy the public in general and several members of the Parliament in particular, who raised a demand for a fresh inquiry into the matter. Under the circumstances, the Government of India, in exercise of its powers under the Commissions of Inquiry Act, 1952, (the Act for short), constituted an Inquiry Commission vide its Notification No.25/14/70-Poll.11 dated July 11, 1970, headed by Shri G.D. Khosla, Retired Chief Justice of Punjab High Court. The Commission was asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and the subsequent developments connected therewith. The said Commission examined some of the witnesses who had testified before the Shah Nawaz Committee and some other witnesses including Shri Shah Nawaz Khan and Shri Suresh Chandra Bose. That Commission also came to the conclusion that Netaji had succumbed to his injuries sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo. The findings of the Khosla Commission also did not end the controversy surrounding Netaji's death; several important people and personalities including some members of Netaji's family, Shri Samar Guha, ex-MP, and others did not accept the findings of the Khosla Commission. Since then there had been a widespread feeling among the public that the issue of finding the truth about Netaji's disappearance / death still remained unresolved and there was a consistent demand for another inquiry into the matter.

2.4.5 From the above resume of facts relating to the file in question it is evident that the stand taken by the Cabinet Secretariat is evasive and unfathomable. The Director of the Prime Minister's office (PMO for short) clearly stated in her letter dated July 4, 2000 (referred to earlier) that the file "was destroyed in 1972.... since records of Cabinet proceedings are kept permanently in the Cabinet Secretariat from where these may be procured". Since the file is said to have been destroyed four years after formation of the Cabinet Secretariat and since the records of the Cabinet proceedings are to be kept permanently in the Cabinet Secretariat the only conclusion that can be drawn is that if the file had been destroyed as claimed, the copies of the documents contained in the file were in the Cabinet Secretariat and obviously for this reason the Director of PMO asked the Commission to get the file procured therefrom. Judged in that context, the Commission would have been fully justified in pursuing the matter further with the Cabinet Secretariat to bring to their notice that their plea for not producing the papers was specious and tenuous for the reasons aforesaid, but the curt reply of its Deputy Secretary peremptorily forestalled all contemplated future attempts of the Commission to retrieve atleast the copies of the documents contained in a file bearing the subject heading "Investigation into the circumstances leading to the death of Shri Subhas Chandra Bose" which was not only the subject matter of inquiry of the Khosla Commission but is also of the present Commission.

2.5 Some of the deponents before this Commission brought to its notice that on August 3, 1977 Prof. Samar Guha moved the following motion in the Parliament (Lok Sabha):-

"That this House do consider the Report (1974) of the Commission of Inquiry into the disappearance of Netaji Subhas Chandra Bose laid on the Table of the House on the 3rd September, 1974"

and in reply thereto Shri Morarji Desai, the then Prime Minister of India, made the following statement on August 28, 1978:-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee (sic) of enquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed, some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive."

2.5.1 Pursuant thereto this Commission asked the Prime Minister's office (PMO), the Ministry of External Affairs (MEA), the Cabinet Secretariat (CS) and the Ministry of Home Affairs (MHA) to ensure production of all those 'further contemporary official documentary records' which as stated by the Prime Minister had 'also become available' to the Government of India. They were also asked to send to the Commission

(b) Its limitations and constraints

(i) re : records / documents

2.4 As stated earlier, some files / documents have not been produced by the Government of India in spite of repeated reminders. Out of these files / documents the following would have been, in the opinion of the Commission, of great assistance in answering the terms of reference:-

2.4.1 One of the files called for by the order dated March 23,2000 was file no.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose). In response thereto the Director of the Prime Minister's office (PMO for short) intimated by her letter dated May 2,2000 that the above file was not available as it had been destroyed. On receipt of the above communication the Commission asked her, by its letter dated May 23,2000, to intimate to the Commission the subject and contents of the above file and the circumstances under which the said file had been destroyed. When the Commission was awaiting her reply Shri A. K. Paitandy, Director (Internal Security-1) in the Ministry of Home Affairs ('MHA' for short) filed an affidavit before this Commission on June 22,2000 wherein he stated, inter alia, as under:-

".... in view of the fact that some of the departments / organisations have informed that they do not have any papers on Netaji / INA, there seems to be

some confusion about filing of affidavits to that effect by them. In view of this fact and in deference to the directions/orders of the Commission, this Ministry is filing this affidavit on behalf of the following and I accordingly further affirm and state that there are reportedly no files/papers concerning Netaji / INA in their (the under mentioned departments') possession (emphasis supplied) :-

- i) Cabinet Secretariat
- ii) Intelligence Bureau
-) Research and Analysis Wing"

2.4.2 The assertion made by Shri Paitandy, quoted above, stood belied, as the Director of the PMO in reply to the Commission's letter dated July 4, 2000 stated (in her letter dated July 4, 2000) the "file No.12(226)/56-PM which contained agenda paper/cabinet decision regarding "Investigation into the circumstances leading to the death of Shri Subhas Chandra Bose" was destroyed in 1972 in course of routine review/weeding of old records since records of Cabinet proceedings are kept permanently in Cabinet Secretariat, from where they may be procured".(emphasis supplied).

2.4.3 To ascertain which of the above versions was correct the Commission wrote a letter to the Secretary, MHA on August 18, 2000 calling upon him to produce photocopies of all the agenda papers/Cabinet decisions concerning "Investigation into the circumstances leading to the death of Netaji" from the custody of the Cabinet Secretariat. Another letter was addressed to the Secretary of the Prime Minister's Secretariat on August 25, 2000 calling upon him to produce copies of the orders regarding destruction of files/documents concerning Netaji Subhas Chandra Bose as

127
DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

IN THE MATTER OF:

W.P. No. 2751 (W) of 2006.

-And-

IN THE MATTER OF:

An application under Article 226
of the Constitution of India;

-And-

IN THE MATTER OF:

SRI ASHIM KUMAR GANGULY AND ANOTHER

-VERSUS- PETITIONERS.

UNION OF INDIA AND OTHERS.

.... RESPONDENTS.

"SUPPLEMENTARY AFFIDAVIT ON BEHALF
THE PETITIONERS"

On Record:

MR. SUBHASH CHANDRA BASU
85, Sadar Boud Lane,
Post Office, Police Station
and District - Howrah, Pin: 711101.
Phone : M - 9830585206.

R-4 F
Pl. issue

MC
12/10/07

128
Sr No. 12 (C)

COURT CASE
MOST IMMEDIATE
BY SPECIAL MESSENGER/SPEED POST

No. I/12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, Khan Market,
New Delhi-3, dated October 12, 2007.

To

1. The Joint Secretary (CNV),
Ministry of External Affairs,
South Block, New Delhi.
2. The Director, Netaji Research Bureau,
39/2, Lala Lajpat Roy Road,
Kolkata-20.
3. The Secretary, Ministry of Defence,
South Block, New Delhi.

12 OCT 2007

Suh: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.

Sir,

I am directed to enclosed herewith a copy each of original petition and supplementary affidavit in the matter with request to kindly send your comments on the paragraphs which concern your Ministry/Organisation. In case a reply has already been filed in the matter, a copy of the same may be forwarded..

This may kindly be treated as most immediate.

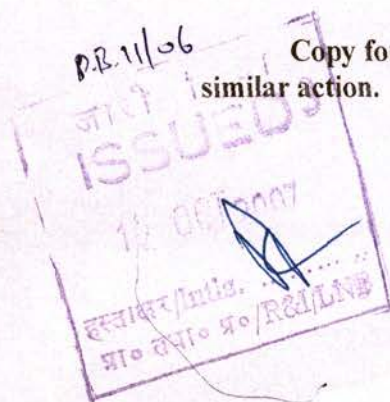
Yours faithfully,

Sug 12/10/07
(S.K. Goswami)

Under Secretary to the Govt. of India

Encl: As above.

Copy forwarded to Public Section, MHA, North Block, New Delhi, for similar action.



P.S.I
Pl. J. S. S. S.
12/10/07

Sr No. 13 (F) 129

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COURT CASE
MOST IMMEDIATE
BY PEED POST

No. I/12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, Khan Market,
New Delhi-3, dated October 12, 2007.

To

Shri Tarun Kumar Ghosh,
Advocate,
10-A, Dr. Kartick Bose Street,
Kolkata – 700009.

12 OCT 2007

Suh: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.

Sir,

I am directed to acknowledge receipt of the copy of writ petition and supplementary affidavit in the matter and to say that parawise comments are under preparation. As other respondents are also to be consulted for preparing the affidavit in opposition, it will take some time.

You are, therefore, requested to kindly seek extension of time to file the opposition. The parawise comments will be sent to you immediately after these are received from concerned Ministries i.e. Ministry of External Affairs, Ministry of Defence etc. and a consolidated reply is finalized.

Yours faithfully,

e/c *sig* 12/10/07

(S.K. Goswami)

Under Secretary to the Govt. of India



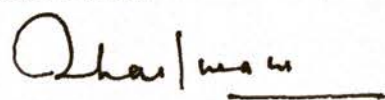
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Sr No 14(R)
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COURT CASE
MOST IMMEDIATE

Ministry of Defence
O/o Deputy Secretary (Training)

Subject: **Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly and another versus Union of India and others.**

Reference letter No. 1/12014/12/2007-Cdn. dated 12th October 2007 of the Ministry of Home Affairs forwarding therewith a copy each of original petition and supplementary affidavit and also our Telephonic conversation in the subject matter.

2. As far as observations at para 5(Page 13) of the Writ Petition is concerned, it is stated that there is no proposal before the Ministry of Defence for bringing back the ashes of Netaji Subhas Chandra Bose.


(Bhaskar Verma)
Deputy Secretary (Training)
Tele: 23010600

Shri S.K.Goswami,
Under Secretary,
Ministry of Home Affairs,
Lok Nayak Bhavan, Khan Market,
New Delhi-110003.

MOD ID No. 569/D(GS-II)/07 dated 29th October 2007

131

47


COURT CASE
MOST IMMEDIATE

Ministry of Defence
O/o Deputy Secretary (Training)

Subject: **Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly**
and another versus Union of India and others.

Reference letter No. 1/12014/12/2007-Cdn. dated 12th October 2007 of the Ministry of Home Affairs forwarding therewith a copy each of original petition and supplementary affidavit and also our Telephonic conversation in the subject matter.

2. As far as observations at para 5(Page 13) of the Writ Petition is concerned, it is stated that there is no proposal before the Ministry of Defence for bringing back the ashes of Netaji Subhas Chandra Bose.


(Bhaskar Verma)
Deputy Secretary (Training)
Tele: 23010600

Shri S.K.Goswami,
Under Secretary,
Ministry of Home Affairs,
Lok Nayak Bhavan, Khan Market,
New Delhi-110003.

MOD ID No. 569/D(GS-II)/07 dated 29th October 2007

23/10/2007
MA

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----- Forwarded message -----

From: Jatan Singh <jatan_singh@yahoo.com>

To: ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>

Cc:

Date: Tue, 21 May 2013 08:01:47 -0700 (PDT)

Subject: Re: PIL Delhi High Court (Prashant Paliwal v. Union of India)

Dear Mr. Gawai,

Request you to inform us about the relevant ministry which would be competent to deal with the issue of bringing the ashes of Late Mr. Subash Chander Bose from Japan.

Regards,

Jatan Singh

Central Government Standing Counsel.

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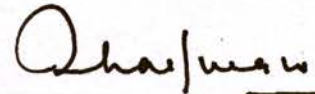
COURT CASE
MOST IMMEDIATE

Ministry of Defence
O/o Deputy Secretary (Training)

Subject: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly and another versus Union of India and others.

Reference letter No. 1/12014/12/2007-Cdn. dated 12th October 2007 of the Ministry of Home Affairs forwarding therewith a copy each of original petition and supplementary affidavit in the subject matter.

2. All records pertaining to the Indian National Army (INA) have been declassified and transferred to the National Archives in 1997. The Ministry of Defence therefore has no comments to offer.



(Bhaskar Verma)
Deputy Secretary (Training)
Tele: 23010600

✓ Shri S.K.Goswami,
Under Secretary,
Ministry of Home Affairs,
Lok Nayak Bhavan, Khan Market,
New Delhi-110003.

MOD ID No. 569/D(GS-II)/07 dated October 2007

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26/10/07

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P.P. Singh

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Pl. issue the
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13/11/07



**COURT CASE
MOST IMMEDIATE
BY SPECIAL MESSENGER/SPEED POST**

No. I/12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, Khan Market,
New Delhi-3, dated November 12, 2007.

P.B. 1/07

To

1. The Joint Secretary (CNV),
Ministry of External Affairs,
South Block, New Delhi.

13 NOV 2007

By Speed Post 2.
P.B. 16/07

The Director, Netaji Research Bureau,
39/2, Lala Lajpat Roy Road,
Kolkata-20.

**Suh: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.**

Sir,

I am directed to refer to this Ministry's letter of even number dated October 12, 2007 on the above subject and to say that copies of writ petition and supplementary affidavit in the above writ petition were sent for furnishing the comments, so as to enable this Ministry to prepare the parawise reply. As the same has not been received so far, this Ministry has not been able to take necessary action.

2. It is, therefore, requested to kindly send the comments as expeditiously as possible, so that further action can be taken at this end.

Yours faithfully,

O/c Sng 12/11/07
(S.K. Goswami)

Under Secretary to the Govt. of India
Tel. No. 2461 0466

Encl: As above.

P.B. 16/07

Copy forwarded to Public Section, MHA, North Block, New Delhi, for similar action.

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No 16 (I)
No.12014/12/07-Cdn
Government of India
Ministry of Home Affairs
Internal Security Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt.14.11.07

OFFICE MEMORANDUM

Subject: Writ Petition No.27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.

Apropos discussion of US(Arms) with you on 13.11.06 on the above
subject, a copy of the relevant portion of above said Writ Petition and a
copy of relevant portion of the supplementary affidavit on behalf of the
petitioner is enclosed for furnishing the comments at the earliest.

B. Rekhi
(Baljeet Kaur Rekhi)
Section Officer

P.B. 11/06
M
Smt. A. Sobti,
Section Officer,
Public Section,
MHA, North Block.

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(121)

SENDING CONFIRMATION

DATE : 15-NOV-2007 THU 13:49
NAME :
TEL :

PHONE : 23792285
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START TIME : 15-NOV 13:49
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Kind Attention JS (CNV)
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COURT CASE
MOST IMMEDIATE
BY SPECIAL MESSENGER/SPEED POST

No. I/12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, Khan Market,
New Delhi-3, dated November 12, 2007.

P.B. 1/07

To

1. The Joint Secretary (CNV),
Ministry of External Affairs,
South Block, New Delhi.

13 NOV 2007

By Speed Post
13/11/07

2. The Director, Netaji Research Bureau,
39/2, Lala Lajpat Roy Road,
Kolkata-20.

Suh: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.

Sir,

I am directed to refer to this Ministry's letter of even number dated October 12, 2007 on the above subject and to say that copies of writ petition and supplementary affidavit in the above writ petition were sent for furnishing the comments, so as to enable this Ministry to prepare the parawise reply. As the same has not been received so far, this Ministry has not been able to take necessary action.

2. It is, therefore, requested to kindly send the comments as expeditiously as possible, so that further action can be taken at this end.

Yours faithfully,

o/c Sng 12/11/07

(S.K. Goswami)

Under Secretary to the Govt. of India
Tel. No. 2461 0466

Encl: As above.

P.B. 16/07

Copy forwarded to Public Section, MHA, North Block, New Delhi, for similar action.

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Sr No. 17 (R)

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(121)

COURT CASE
MOST IMMEDIATE

No. 25/4/NGO – XVI
Ministry of External Affairs
CNV Division

03 December
...November, 2007

OFFICE MEMORANDUM

Subject : Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus UOI and others.

The undersigned is directed to refer to Ministry of Home
Affairs letter No. I/12014/12/2007-Cdn dated October 12 2007 on the
subject above.

2. The comments of this Ministry with regard to paragraphs of
the Writ Petition pertaining to MEA are as under:

(a) **On the Questions of Law (Sr. Nos. 1 – 5)**

The petitioner's averment in paragraph 12 of the Writ Petition states
that without making any formal declaration of death of Netaji by GOI
the Government has no right to spend public money for the upkeep
and maintenance of Renkoji Temple and / or preserve the ashes
alleged to have been claimed of Netaji Subhas Bose. It may be noted
that GOI has the right to accept or reject the Report of the Mukherjee
Commission as it is only a recommendation. The non-acceptance of
the Report, therefore, would amount to maintaining status quo ante
with regard to the status of Netaji and the ashes.

(b) **Paragraphs 12 and 15**

This Ministry is not providing maintenance allowance or other
assistance to the Renkoji Temple, Japan.

(c) **Paragraph 14**

This Ministry has cooperated fully with the Commission in seeking
and arranging appointments for the members of the Commission
during their visits to various foreign destinations in Japan, Russia and
Taiwan, and in seeking and forwarding information to the
Commission available in its records and from foreign sources
identified by the Commission.

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4/12/07
M. M. M.

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(d) **Paragraph 16**

This Ministry is not aware of any decision by Government to handover the ashes of Netaji to his daughter.

(e) **Paragraph 17**

Government has not discussed the matter with the Government of Japan including on the issue of return of ashes to India.

D. Shaw 03/12/02
(Debnath Shaw)
Joint Secretary (CNV)
Tel: 23011357

Shri S.K. Goswami
Under Secretary
Internal Security Division
Ministry of Home Affairs
Lok Nayak Bhawan
Khan Market, New Delhi

P.L.
Dhane
M
7/1/07

Sr No 18(I) 147

130 (123)



COURT CASE
MOST IMMEDIATE
BY SPEED POST

No. I/12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, Khan Market,
New Delhi-3, dated January 7, 2008.

The Director, Netaji Research Bureau,
39/2, Lala Lajpat Roy Road,
Kolkata-20.

- 7 JAN 2008

Suh: Writ Petition No. 27541/2006 – Shri Ashim Kumar Ganguly
and another versus Union of India and others.

Sir,

I am directed to refer to this Ministry's letter of even number dated
October 12, 2007 and November 12, 07 on the above subject and to say that
the partiwise comments have been received so far and as a result, this
Ministry has not been able to file the reply in the above matter.

2. It is, therefore, requested to kindly send the comments as
expeditiously as possible, so that further action can be taken at this end.

Yours faithfully,

o/c Rng 2/1/08
(S.K. Goswami)

Under Secretary to the Govt. of India
Tel. No. 2461 0466

P.R. 5/08
of NCB

Copy forwarded to Public Section, MHA, North Block, New
Delhi, for similar action.



NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAVAN • CALCUTTA

Prof. Mrs. Krishna Bose
Chairperson, Netaji Research Bureau

27th November 2007

Mr. S.K. Goswami
Under secretary to the Government of India
Ministry of Home Affairs
Lok Nayak Bhavan, Khan Market
New Delhi 110 003

Sub : Writ Petition No. 27541/2006-Shri Ashim Kumar Ganguly and another versus
Union of India and others

Dear Mr. Goswami,

This is in response to your letter written to the Director of Netaji Research Bureau of 13th November 2007, copy enclosed. Please clarify what comments are expected from us. It appears the petitioners want a) to restrain the Government from bringing back the ashes; b) that the Government should not spend money for the upkeep of Netaji's remains preserved in the Renkoji Temple. We did not quite understand how the Netaji Research Bureau, an academic organization is expected to respond to demands made on the Government of India.

With regards,

Sincerely,

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson, Netaji Research Bureau

*Received today
by fax
May 14. see
in date. 14/1/08*

*9
14/1/08*

143
125
Court Case

No. 1/2/2008-Public
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi-110001
Dated the 16th January, 2007.

Office Memorandum

Sub: Writ Petition No.27541/2006 – Shri Ashim Kumar Ganguly
and another Vs. U.O.I. and others.

The undersigned is directed to refer to Internal Security Division's O.M. No.12014/12/07-Cdn. Dated 14.11.07 and to say that the comments on para 5 of the writ petition and petition of the Supplementary Affidavit relating to the proposal for conferment of Bharat Ratna on Netaji Subhash Chandra Bose posthumously are as follows:

I. Reply to para 5 of the Writ Petition-

1. "On 7th August, 1991, in connection with a Special Mention by late Pramod Mahajan, the then M.P., Rajya Sabha, Members present had urged the Government to confer Bharat Ratna posthumously on Maulana Abul Kalam Azad and Shri Subhash Chandra Bose. Keeping in view the sentiments of these Hon'ble Members and in recognition of their public service of the highest order, the names of Maulana Abul Kalam Azad and Netaji Subhash Chandra Bose were approved by the President of India for the award of Bharat Ratna and the same was announced on 23rd January, 1992.

2. Keeping in view the widespread public reaction and sentiments of the people and to avoid unnecessary controversy, the Government decided, notwithstanding the earlier announcement, not to take any further action in the matter.

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Can you pl. file. m 17/1
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3. The Supreme Court vide its order dated 4.8.1997 in Special Leave Petition (C) No.628 of 1994 with Transferred Case (C) No.7 of 1994 stated that "The real controversy in these proceedings relates to the press communiqué. Since no further steps have been taken pursuant to the press communiqué and the matter is treated as closed. We declare that the press communiqué should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of."

II. Reply to paras 6 to 8 of the Supplementary Affidavit-

1. Para 6- No comments.

2. Para 7 to 8- Admn. Divn. have no comments to offer. Reply may be formulated by I.S.Division of MHA.

A copy of the reply to the present Writ Petition filed in the Court may be sent to the undersigned for reference and record.


(Arvind Mukherjee)

Under Secretary to the Govt. of India
Tel. 2309 4422

To

The Under Secretary (Arms),
Internal Security Division,
Ministry of Home Affairs,
9th Floor, C-Wing,
Lok Nayak Bhavan,
New Delhi.

FAY 11/24/96

24/6/96

148
Sr No. 21 (LR)

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127

Court Case

No. 1/2/2008-Public
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

* * *

North Block, New Delhi-110001
Dated the 16th January, 2007.

Office Memorandum

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and another Vs. U.O.I. and others.

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Sr
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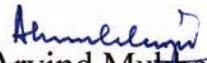
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A copy of the reply to the present Writ Petition filed in the Court may be sent to the undersigned for reference and record.


(Arvind Mukherjee)
Under Secretary to the Govt. of India
Tel. 2309 4422

To

The Under Secretary (Arms),
Internal Security Division,
Ministry of Home Affairs,
9th Floor, C-Wing,
Lok Nayak Bhavan,
New Delhi.

Someone informed of his arrest as he is put under arrest.

made in the diary at the time of the arrest of the person who has been informed of the arrest and particulars of the arrest and the place of custody of the arrestee is to be shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

be subjected to medical examination by a doctor every 48 hours in custody by a doctor on duty. The names of the doctors appointed by the Government of the State or Union Territory, Director, Health Services, to constitute a panel for all tehsils and districts.

documents including the diary entries, should be sent to the court for his record.

be permitted to meet his family and friends, though not for more than 15 minutes.

room should be provided at the headquarters, where the arrest and the place of custody shall be communicated to the court, within 12 hours of the arrest and at the police control room on a conspicuous place.

ed that failure to comply with these directions, apart from rendering the responsible officers liable for departmental action, shall render him liable to be held in contempt of court and the court could, in the event of the country, having regard to the matter. This Court in AIR SCW 233, para 40, has mentioned above shall be

forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

3. More than seven months have elapsed since the directions were issued. Through these petitions, Dr. Singhvi, the learned Amicus Curiae, who had assisted the Court in the main petition, seeks a direction, calling upon the Director General of Police and the Home Secretary of every State/Union Territory to report to this Court compliance of the above directions and the steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

4. We direct the Registry to send a copy of this application, together with a copy of this order to respondents 1 to 31 to have the report/reports from the Director General of Police and the Home Secretary of the concerned State/Union Territory, sent to this Court regarding the compliance of the above directions concerning arrestees. The report shall indicate in a tabular form as to which of the "requirements" has been carried out and in what manner, as also which are the "requirements" which still remain to be carried out and the steps being taken for carrying out those.

5. Report shall also be obtained from the Directors of All India Radio and Doordarshan regarding broadcasts made.

6. The notice on respondents 1 to 31, in addition, may also be served through the standing counsel of the respective States/Union Territories

in the Supreme Court. After the reports are received, copies of the same shall be furnished to the Advocate on Record for Dr. Singhvi, Ms. Suruchi Agrawal, Advocate.

7. The reports shall be submitted to this court in the terms, indicated above, within six weeks from today. The matters shall be put up on board for monitoring, after seven weeks.

Order accordingly.

AIR 1997 SUPREME COURT 3019

(From : Calcutta)*

Mrs. SUJATA V. MANOHAR AND
G. B. PATTANAIK, JJ.

Spl. Leave Petn. (C) No. 628 of 1994 with Transferred Case (C) No. 7 of 1994, D/- 4-8-1997.

Union of India, Petitioner v. Bijan Ghosh and others, Respondents.

(A) Constitution of India, Arts. 18, 136 — Award of decorations by President — Press communique announcing conferment of award of Bharat Ratna Posthumously on Netaji Bose — Unhappiness expressed by members of public and members of Netaji's family at such announcement — Govt. of India in deference to sentiments expressed not proceeding further to confer award and treating the matter as closed — Objection to word 'posthumously' used in press communique therefore not considered — Press communique declared as cancelled.

(Para 6)

(B) Constitution of India, Art. 18 — Notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres./55 Cls. 1, 8, 10 — Bharat Ratna, Padma Vibhushan, Padma Bhushan etc. — Award of — Annulment of — Procedure.

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of

*C. O. No. 6720 of 1993, D/- 6-12-1993 (Cal.)
HO/HO/S629/97/VVG/CSL

the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India.

(Para 6)

Altaf Ahmad, Addl. Solicitor General, B. Parthasarathi, Hemant Sharma, P. Parmeswaran, Advocates with him for Petitioner; In person for the Respondent. F. S. Nariman, M. N. Krishnamani, Sr. Advocates, Rudra Bhattacharjee, (Subhash Sharma), Advocates for Ms. Sarla Chandra, Advocate with them for Respondents. V. P. Saini, In-person for Respondent.

ORDER :— The proceedings which are before us have arisen out of a press communicate which was issued from the Rashtrapati Bhawan, New Delhi and was published on 23rd of January, 1992. It is to the following effect :—

“The President is pleased to confer the award of Bharat Ratna posthumously on Shri Subhash Chandra Bose.”

On reading this press communicate the sentiments of many people were hurt. The petitioner filed a writ petition in the Calcutta High Court praying, inter alia to recall, rescind cancel and revoke the ‘Bharat Ratna’ purported to be conferred on Netaji Subhas Chandra Bose posthumously by the press communicate dated 22nd January, 1992 and forbear from handing over to any person or persons, institution or institutions any document or insignia or symbol containing the impugned ‘Bharat Ratna’ or any communication bearing reference thereto for acceptance or preservation or display or for any other purpose. The petitioner also prayed for a direction that respondents 1 and 2 declare full particulars of the whereabouts of Netaji Subhas Chandra Bose from 18th of August, 1945 till date on the basis of records and information at their disposal de hors the reports and findings of the Netaji Inquiry Committee 1956 and the Netaji Inquiry Commission, 1970, and to institute a proper investigation into such whereabouts with a view to locating him, if alive, and bringing him to India with due honour and dignity and if he is found to have died, to furnish full particulars of his stay from 18th August, 1945 onwards and his subsequent death and the place and manner of disposal of his mortal remains. There are various reliefs prayed for which are connected with these reliefs.

2. The petitioner has taken strong exception to the use of the word ‘posthumously’ in the press communicate and has submitted that the Government of India has not officially accepted the alleged report of the death of Netaji Subhas Chandra Bose in an air-crash in Taiwan on 18th of August, 1945. Without any specific report of the death of Netaji Subhas Chandra Bose being accepted by the Government of India, it cannot and should not confer on him any title with the description ‘posthumously’. In this connection elaborate averments have been made about the Netaji Inquiry Committee, 1956 which was then constituted and the report of this Committee as also the Netaji Inquiry Commission, 1970 constituted under the Commissions of Inquiry Act, 1952. It is contended that a further inquiry should be held in this connection and in the absence of such an inquiry the award should not be conferred posthumously.

3. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose. It is contended that an award or a title has its own limitations. When a personality is higher and greater than any award or title, conferring of such honour on that person becomes ridiculous and it becomes an act of “carelessness” to classify such a person as an equal of others who have already been awarded such title or who may be awarded such a title in future.

4. It seems that the family members of Netaji Subhas Chandra Bose also conveyed to the Government of India their unhappiness at the announcement and expressed their unwillingness to accept such an award.

5. In view of the sentiments expressed by the members of public and the family members of Netaji Subhas Chandra Bose in connection with the press communication, the Government of India did not proceed further in the matter. In their affidavit which is filed in these proceedings, they have stated that the matter was treated as closed. The original petitioners have expressed their anguish at this statement made on affidavit by the Government of India and have submitted that the award/press communication should be withdrawn.

6. We have heard the original petitioners and the learned advocates appearing on behalf of some

of the petitioners. I Mr. Altaf Ahmad. General has drawn dated 8th of January the Secretary to the 55 setting out the : the awards of Bharat Padma Bhushan and alia, as follows :—

“1. The decoration of President of India by seal.

8. The names of decoration is conferred in the Gazette of India recipients shall be notified in the Gazette of India of the President.

10. The President award of the decoration thereupon his name shall be entered in the Register and he shall be competent for the decoration and the cancellation and the name of the person of cancellation and the name of the person published in the Gazette of India. In order to confer the necessary that the name of the person published in the Gazette of India be entered in the Register maintained under the Clause 10 which provides for the annulment of the award of the name of such a person and the notice of cancellation required to be published in the Gazette of India. It is pointed out by the Solicitor General that the award of the name of the person published in the Gazette of India and entering in the present case, made by the press communicate issued. In deference to the public and by the original petitioners of Netaji Subhas Chandra Bose the Government of India did not proceed

sen strong exception to humously* in the press submitted that the not officially accepted death of Netaji Subhas Chandra Bose being an event of India, it cannot confer on him any title with the word 'posthumously'. In this connection, it has been made about the year 1956 which was then the year of this Committee as the Commission, 1970. The Commission of Inquiry had recommended that a further inquiry be conducted in this connection and in the event of the award should not be conferred.

also raised another question about the award of Bharat Ratna on the basis of the Commission. It is contended that the award has certain limitations. When the award is conferred on a person, it becomes an act of the Government and not of such a person as an individual. If a person has already been awarded such a title in the past, it cannot be conferred again.

by members of Netaji Subhas Chandra Bose conveyed to the Government. The unhappiness at the time of the award and their unwillingness to accept it is also expressed by the family members of Netaji Subhas Chandra Bose in connection with the award. The Government of India in the matter. In their proceedings, they have treated as closed. They have expressed their views on affidavit by the members of the family. They have submitted that the award should be conferred on the basis of the public and by the members of the family of Netaji Subhas Chandra Bose. The Government of India did not proceed further to confer the award and hence the name was not published in the Gazette of India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communicate or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communicate. Since no further steps have been taken pursuant to the press communicate and the matter is treated as closed, we declare that the press communicate should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.

Order accordingly.

AIR 1997 SUPREME COURT 3021

K. RAMASWAMY AND D. P. WADHWA, JJ.*

Writ Petn. (C) No. 824 of 1988 with Writ Petn. (Cri.) Nos. 745-54 of 1990, D/- 9-7-1997.

Gaurav Jain, Petitioner v. Union of India and others, Respondents.

(A) Constitution of India, Art. 32 — Public

*The judgments are printed in the order in which they are given in the Certified Copy ... Ed.

GO/HO/S 573/97/VNP/RTT

of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres. 55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padmashri. It sets out, inter alia, as follows :—

"1. The decoration shall be conferred by the President of India by a Sanad under his hand and seal."

8. The names of the persons, upon whom the decoration is conferred, shall be published in the Gazette of India and a register of all such recipients shall be maintained under the direction of the President.

10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India."

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the

180
Sr No. 22CR)
No. 1204/Home/06-III/4502/128
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

N. Urgent
Speed Post

Date :- 21.2.08

2196/20(159)/08
26/2
To
Sri L.C. Goel
Jt. Secretary
Ministry of Home Affairs
IS Division
North Block
New Delhi.

Sub:-WP No. 27541(W) of 06
Sri Ashim Ganguly & Anr.
-Vs-
UOI & Ors.

Sr (IS) - on tour
DS (L)
Sir,

Enclosed please find herewith copy of letter dt. 20.2.2008 and copy of order dt. 15.2.2008 passed in the matter as received from our panel counsel Sri T.K. Ghosh, Advocate which speaks for itself.

You are requested to send brief history, para-wise comments and necessary instruction. You are also requested to depute one conversant officer to meet our panel counsel to do the needful. Ap is to be filed within a period of two weeks from date of order on payment of 100 Gms as cost. (61700/-)

Encl: As above.

Pl. speak urgently
26/2
49 (Aring)
50 (CMA)
Yours faithfully,

(G.S. Makker)
Jr.CGA

CC to:-
Sri N.M. Perumal, Director(Juld), Ministry of
Home Affairs, Jaisalmer House, New Delhi -11
Mansingh Road.
2.Sri T.K. Ghosh, Advocate, High Court, Calcutta.

Jr.CGA

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,
1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

The 18th February, 2008.

- To
1. The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.
 2. Mr. S. K. Goswami,
Under Secretary (ARMS) to the Govt. of India,
Ministry of Home Affairs,
Lok Nayak Bahavan, 9th floor,
Khan Market,
New Delhi - 110 003.

By Hand

By Regd. With A/D.

Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007 and Letter Ref.
No. 1/12014/12/2007-Cdn., Govt. of India, Ministry of
Home Affairs, Lok Nayak Bhavan, Khan Market, New
Delhi-110 003 dt. October 12, 2007.



Re : W. P. No: 27541 (W) of 2006
Sri Ashim Ganguly & Anr.Petitioners.
-Vs-

Union of India & Ors.Respondents.
(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 11th September, 2007 about photo copy of writ
petition and photo copy of supplementary affidavit of the petitioners.

In view of the matter, I would like to place it on your record that the matter was
listed in the daily supplementary list dated 15th February, 2008 of Their Lordships The
Hon'ble Mr. Surinder Singh Nijjar, Chief Justice & the Hon'ble Justice
Pinaki Chandra Ghose. Accordingly, the matter was placed for hearing. At the time
of its call I appeared on your behalf. The matter was heard at length.

After hearing the Ld. Advocates for the respective parties Their Lordships were
pleased to award cost of Rs. 100 Gems for non filing of affidavit -in-opposition.
Further, Their Lordships allowed ~~4(four)~~ ^{02 (Two)} weeks time as a last chance to file Affidavit-
in-Opposition in the matter.

Contd.....P/2.

152
Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248 2313

E-mail : barasohe@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

:: 2 ::

The 18th February, 2008.

20th.

It is, therefore, requested you to take necessary steps so that the aforesaid direction be complied with in time.

In view of the matter, I am enclosing herewith photo copy of plain copy of order dated 15.02.2008 passed in the matter for your record and doing the needful.

Thanking You.

Encls.: As stated.

Yours faithfully,

Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)

Advocate.

20.02.2008

153

(135)
2142

by Office
Advocate

Serial
No

Date

Office notes, reports, Orders or proceedings with signature

31

15.02.08

W.P. 27541 (W) of 2007

Mr. Subhas Chandra Basu.

....Petitioner.

Mr. Tarun Kumar Ghosh.

...For U.O.I.

The prayer of the learned counsel appearing on behalf of Union of India to extend the time for filing the affidavit-in-opposition is accepted, in the interest of justice. We are, however, of the opinion that this is a fit case for imposing costs on Union of India. We direct that the affidavit-in-opposition may now be filed within a period of two weeks from date, on payment of 100 Gms. as costs. Reply thereto, if any, may be filed one week thereafter.

Let the matter appear in the list three weeks hence.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties on usual undertaking.

Sd/- (SURINDER SINGH NIJJAR, C.J.)

Sd/- (PINAKI CHANDRA GHOSE, J.)

Recd
20-2-08
Sd/- M. Bhattacharya
(Clerk)
Court of the Hon'ble Judge
District Court

233883087

Ms. ~~Ren~~ N. M. Pen

23074185

23074185

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(136/143)

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

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Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

The 28th February, 2008.

To
1. **The Additional Government Counsel,**
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

By Hand

At 11-00 A.M.

2. **Mr. S. K. Goswami,**
Under Secretary (ARMS) to the Govt. of India,
Ministry of Home Affairs,
Lok Nayak Bhavan, 9th floor,
Khan Market, New Delhi - 110 003.

By Speed Post

Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007 and Letter Ref. No.
1/12014/12/2007-Cdn., Govt. of India, Ministry of Home
Affairs, Lok Nayak Bhavan, Khan Market, New Delhi-110
003 dt. October 12, 2007.

Re : **W. P. No: 27541 (W) of 2006**
Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.
(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : **Mr. G. S. Makkar, Jr. Central Govt. Advocate,**
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 20th February, 2008 about order dated 15.02.2008 for imposing costs and filing of affidavit.

In view of the matter, as per telephonic discussion with Mr. S. K. Malhotra, Deputy Secretary, Internal Security Division, Room No. 2, 9th floor, Lok Nayak Bhawan, Khan Market, New Delhi on 27.02.2008, I am of the view that appeal may be preferred against order of imposing costs only before the Hon'ble Apex Court immediately without loss of any further time.

This is for your record and doing the needful.

Thanking You.

Copy to : By Fax No. (011) 2461-7196 .

Mr. S. K. Malhotra,
Deputy Secretary,
Internal Security Division, Lok Nayak Bhawan,
Room No. 2, 9th floor, Khan Market, New Delhi-110003.

Yours faithfully,


(**TARUN KUMAR GHOSH**)

Advocate.

28. 02. 2008

For information and necessary action.

155

Approved by H.S. on 28/2/08.

(137)
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W.P. No. 27541 of 2006
Ashim Ganguly and another
-vs
Union of India and others
.....

AFFIDAVIT-IN-OPPOSITION on behalf of the respondents

I, S.K. Goswami, son of Shri Santosh Kumar Goswami, aged about 55 years, by occupation service, residing at DDA Flat No. 182, Sector 3, Pocket 16, Dwarka, New Delhi, do hereby solemnly affirm and say as follows :

Para 1: No comments as the petitioners are to establish the same.

Para 2: No comments as the petitioners are to establish the same.

Para 3: No comments as these are matters of records.

Para 4: No comments as these are matters of records.

Para 5: With reference to the averments made in this para relating to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose, it is stated that the decision to award Bharat Ratna

was taken in January, 1992, keeping in view the public service of highest order. Keeping in view the widespread public reaction and sentiments of the people and to avoid unnecessary controversy, Government of India decided, notwithstanding the earlier announcement, not to take any further action in the matter. It is stated that the Hon'ble Supreme Court also recorded in its order dated 4.8.1997 that "The real controversy in these proceedings relates to the press communiqué. Since no further steps have been taken pursuant to the press communiqué and the matter is treated as closed, we declare that the press communiqué should be treated as cancelled. With this ~~declaration~~ nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of." Regarding bringing the ashes of Netaji Subhas Chandra Bose kept in the Renkoji Temple, Japan, to India by Ministry of Defence, it is stated that there is no proposal before the Ministry of Defence to bring back the ashes of Netaji to India.

Para 6: It is stated that Justice Mukherjee Commission of Inquiry was set up by Ministry of Home Affairs vide Notification dated 14th May, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including:-

MOD Comments as per
their reply on Waga 117/c

WP 2754

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Para 8: It is submitted that the report of the Justice Mukherjee Commission was examined thoroughly and it was observed that Commission's inquiry was inconclusive in many ways, unable to provide a definitive finding on several issues and at variance with past well accepted inquiry Commissions' findings in some critical areas. It is further submitted that Justice Mukherjee Commission did not provide any finding on point at Sub-para (d) of terms of references mentioned in reply to para 6 above. Thus, Government of India did not find it possible to accept the findings of the Justice Mukherjee Commission and it has accordingly been reflected in the Action Taken Report ^(copy enclosed as ANNEX) laid before the Houses of Parliament.

Para 9: It is reiterated that Government of India was not able to accept the report of the Justice Mukherjee Commission inasmuch as the inquiry was found to be inconclusive in many ways and it had not been able to provide definite findings on several issues as mentioned in reply to para 8 above. It is further submitted that though the Justice Mukherjee Commission concluded that Netaji was

Member of
Lok Sabha
Parl.
Action taken
report copy
could be annexed?

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

Para 7: No comments as these are matters of records.

~~Para 8: It is submitted that the report of ^{The} Justice Mukherjee Commission was examined thoroughly and it was observed that the Commission's inquiry was inconclusive and it had not been able to provide definite findings. Thus, Government of India did not find it possible to accept the findings of the Justice Mukherjee Commission and it has accordingly been reflected in the Action Taken Report laid before the Houses of Parliament.~~ ?

Para 9: It is reiterated that Government of India was not able to accept the report of the Justice Mukherjee Commission inasmuch as the inquiry was found to be inconclusive ^{in many ways} and it had not been able to provide definite findings. ^{on several issues as mentioned in reply to para 8 above.} It is further submitted that ~~though~~

~~The~~ Justice Mukherjee Commission ~~though~~ concluded that Netaji was

dead but he did not die in plane crash, the Commission did not answer the point (d) of terms of reference which required the Commission to find out "Whether he has died in any other manner at any other place and if so, when and how. The Commission on point (d) only said that in the absence of any clinching evidence a positive answer cannot be given. It is denied that Government of India had any control and supervision on the working of earlier Committee and Commission. It is submitted that the earlier Committee and Commission inquired into the matter independently and came out with their own independent findings. It is also submitted that like the Justice Mukherjee Commission, Khosla Commission was also appointed under the Commissions of Inquiry Act, 1952. It is further submitted that although Shah Nawaz Committee could not visit Formosa as India had no diplomatic relations with that country at that time, Khosla Commission visited Taiwan (formerly known as Formosa) in connection with the inquiry and this has been recorded in Chapter Eight of its report.

Para 10: It is submitted that the report of the Justice Mukherjee Commission along with the Action Taken Report was placed before both the Houses of Parliament on 17th May, 2006, as required under Section 3(4) of the Commissions of Inquiry Act, 1952. The matter was discussed in the Parliament under Rule 193 followed by a reply by Home Minister on 7.8.2006. It is denied and disputed that Government of India has no interest in the matter, as alleged.

It is submitted that Government of India extended full cooperation to the Justice Mukherjee Commission of inquiry into the alleged disappearance of Netaji Subhas Chandra Bose as required from time to time.

Para 11: It is submitted that Government of India appointed the Justice Mukherjee Commission of Inquiry in compliance with the directions of the Hon'ble Calcutta High Court followed by a Motion adopted by the West Bengal Legislative Assembly demanding that the Government of India should enable public access to all records and documents to demystify the matters in and outside India pertaining to the whereabouts of Netaji Subhash Chandra Bose. It is further submitted that the Government of India treated this matter of public importance by issuing said Notification dated 14th May, 1999 appointing Justice Mukherjee Commission of Inquiry, which states that "the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose". The findings of the Justice Mukherjee Commission could not be accepted by the Government of India for the reasons mentioned in para 8 herein above. It is denied that there is any attempt to uphold the reports of the earlier Committee and Commission as imputed.

Para 12: It is stated that Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo. With regard to the averment about expenditure from public exchequer on research work on Netaji, Respondent No. 5 may be able to indicate the correct position.

Para 13: It is denied that there is any vested interest to uphold the earlier reports. It is stated that the Government of India accepted the earlier reports as they were well reasoned in comparison to the JMCI report which did not even give complete findings on the terms of reference especially point at (d) of terms of reference as explained in reply to para 9 herein above.

Para 14: The averments made in this para are denied. It is submitted that the Government of India extended full cooperation to the Justice Mukherjee Commission and produced all available records/documents before it. It is submitted that records in the Government of India offices are destroyed/weeded out strictly as per the record retention schedule.

Para 15: It is denied that the Government of India is spending money to maintain the ashes kept in the Renkoji Temple, Tokyo. The report of the JMCI has already been placed before Parliament on 17th May, 2006 and the matter has already been discussed in Parliament under Rule 193 followed by a reply by Home Minister on

7.8.2006. There is no point in placing the JMCI report before the Members of Parliament again, as requested by the petitioner.

Para 16: No comments. Netaji Research Bureau as a respondent may reply to the averments made in this para.

Para 17 and Para 18 : It is reiterated that Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo. It is also stated that there is no proposal between Government of India and the Government of Japan regarding return of the ashes to India including handling over of ashes to the daughter of Netaji, as averred.

Para 19: The averments made in this para are denied. Government of India attaches high importance to Netaji Subhas Chandra Bose. The JMCI report has already been discussed in Parliament.

REPLY TO THE GROUNDS

Ground I: It is stated that Government of India is not spending any money for the maintenance of ashes kept in the Renkoji Temple, Tokyo.

Ground II: It is reiterated that the report of Justice Mukherjee Commission could not be accepted as it was observed that the inquiry was inconclusive and it had not been able to provide definite findings and that it did not reply to point (d) of the terms of reference and hence, the inquiry was found to be incomplete. It is further submitted that Government of India did not find the report of Justice Mukherjee Commission convincing and conclusive enough to disagree with the findings of the earlier Committee and Commission and it was, therefore, decided not to accept the same (report of JMCI).

Ground III: It is submitted that Government of India examined the report of the Justice Mukherjee Commission thoroughly, but it is reiterated that it could not be accepted as it was inclusive and did not give definite finding.

Ground IV: No comments. Netaji Research Bureau, Kolkata as respondent may reply to the averments made in this para.

Ground V: Government of India does not spend any money for the maintenance of the ashes kept in the Renkoji Temple, Tokyo.

Ground VI: Government of India does not spend any money for the maintenance of the ashes kept in the Renkoji Temple, Tokyo.

Ground VII: It is submitted that the report of the Justice Mukherjee Commission has already been placed before both the Houses of Parliament on 17th May, 2006, discussion held under Rule 193 and Hon'ble Home Minister also gave reply thereto on 7.8.2006.

Ground VIII: Government of India does not spend any money for the maintenance of the ashes kept in the Renkoji Temple, Tokyo.

Ground IX: The averments made in this para are denied.

Para 20: Government of India could not accept the report of the Justice Mukherjee Commission as its was found to be inconclusive and did give definite findings on all the terms of reference assigned to the Commission.

Para 21: The petitioners are to establish the same.

Para 22: It is submitted that Government of India did not find the report of Justice Mukherjee Commission convincing and conclusive enough to disagree with the findings of the earlier Committee and Commission and it was decided not to accept the same (report of JMCI).

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Para 23: In view of the fact that the petitioners have not been able to make out any convincing case in this writ petition, no relief should be allowed/granted to them.

Para 24: With reference to the prayers under this para, it is stated that (i) the report of the Justice Mukherjee Commission has already been placed before both the Houses of Parliament, and the Hon'ble Home Minister replied to the discussion under Rule 193 on the report of Justice Mukherjee Commission of Inquiry, (ii) all available records/documents relating to the death of Netaji Subhas Chandra Bose were produced before the Justice Mukherjee Commission, (iii) no expenditure is being incurred on preservation of ashes kept in Renkoji Temple, Japan, it is humbly submitted that as the petitioners have not been able to make out any case in this writ petition vis-à-vis Union of India and in view of the fact that the allegations made against the respondents do not sustain as they have all been rebutted categorically and convincingly, this writ petition deserves to be dismissed at the very outset.



S.K. Malhotra
Deputy Secretary (Legal)

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भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS
लोक नायक भवन, खान मार्केट
LOK NAYAK BHAWAN, KHAN MARKET
नई दिल्ली-110003
NEW DELHI-110003

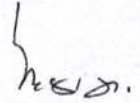
No. 1/12014/12/2007-Cdn.

Dated: 9-01-08

Dear Sir,

Please refer to the discussions I had with you today morning regarding our letter of even No. dated 12-10-07 about WP 27541/06 titled Shri Ashim K. Ganguly Vs UOI and others. No comments have been received in spite of reminder sent on 13-11-07 and 7-1-08. The Petitioner has prayed before the Court for ex-parte hearing, in view of non-submission of reply by UOI. Aspersions are likely to be given by court due to delay by us. Please expedite your comments on relevant paras concerning Public Section to avoid problem.

Yours sincerely,


(S.K. Malhotra)

Shri S.K. Bhatnagar,
Deputy Secretary,
Public Section,
Ministry of Home Affairs.
2309-3178

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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

To,

Shri G S Makker,
Junior C.G.A.,
Ministry of Law and Justice,
11, Strand Road,
Kolkata – 1.




Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.

Sir,

The undersigned is directed to refer to your letter No. 1204 / Home / 06-III / 4502 / 128 dated 21st Feb, 2008 on the above subject and to say that Shri Naresh Jaiswal, Section Officer, MHA has been deputed to visit Kolkata along with parawise comments and to meet the panel Counsel Shri Tarun Kumar Ghosh, Advocate, High Court Kolkata for immediate preparation of affidavit for filing the same in the Court and depositing the cost of Rs. 1700/-.

2. As the matter raised in the PIL is of utmost importance and crucial for the Government, it has been decided with the approval of Union Home Secretary to appoint a Special Counsel i.e. Shri R N Das who has already been engaged in another similar case (WP No. 2003 / 2006 – Shri Rudra Jyoti Bhattacharyya Vs UOI and Others). Therefore, it is requested that you may kindly appoint Shri R N Das in this case too, so that the affidavit in opposition prepared by Shri T K Ghosh, Senior Counsel could be got vetted before filing the same in the Court.


Yours faithfully,


(S K Malhotra)

Deputy Secretary to the Government of India
Tele No. 2469 7124

Copy for kind information to :-

- (1) Shri R N Das, Sr. Counsel, Kolkata.
- (2) Shri Traun Kumar Ghosh, Advocate, Room No. 2, High Court, Kolkata.


(S K Malhotra)
Deputy Secretary to the Government of India

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149
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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

To,

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, Calcutta.
38 /2, Lal Lajpat Rai Sarani,
Kolkata – 700 020.

Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.

Dear Madam,

With reference to your letter dated 27th Nov, 2007 on the above subject, it is stated that since Netaji Research Bureau has been made a respondent (R – 5) in the said case, the Bureau may file a reply to the averments made in the para 16 of the Writ Petition indicating the position obtaining on the averment made about the research work on Netaji.

Yours faithfully,

(S K Malhotra)

Deputy Secretary to the Government of India
Tele No. 2469 7124

Copy to :-

Shri Tarun Kumar Ghosh,
Advocate,
Bar Association,
Room No. 2, High Court,
Kolkata



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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Dated, the 29th Feb, 2008.

To,

Shri Tarun Kumar Ghosh,
Advocate,
Bar Association Room No. 2,
High Court, Kolkata.

**Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.**

Sir,

With reference to your letter No. 1204 / Home / 06 / III dated 28th Feb, 2008 on the above subject. I am directed to say that it has been decided with the approval of Union Home Secretary to pay the cost of Rs. 1700/- as well as to make submission before the Hon'ble High Court about the reasons attributable to the delay in filing the reply in the Court. Accordingly, we are deputing Shri Naresh Jaiswal, Section Officer alongwith the demand draft of Rs. 1700/- and parawise comments on the case.

2. It is requested that an affidavit may kindly be prepared for filing the same before the Hon'ble High Court, immediately. Our submission for delay caused in this case and request for review of the order towards the costs may be incorporated in the affidavit, as may be deemed proper. Facts of the case are enclosed.

3. Shri Naresh Jaiswal, Section officer has been authorized to sign the affidavit and give vakalatnama to you on behalf of MHA, which is covered by the instructions dated 14.2.1990 issued by the Ministry of Law and Justice.

Yours faithfully,

(S K Malhotra)

Deputy Secretary to the Government of India
Tele No. 2469 7124

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(H/1
+825)

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

ORDER

Sanction of the Head of the Department is hereby conveyed to the payment of Rs. 1700/- (rupees one thousand seven hundred only) to the **Registrar, High Court, Calcutta** in connection with the following Court cases (s).

S.No.	Case No.	Amount
(1)	WP No. 27541 of 2006 (Ashim Kumar Gaungly Vs UOI and Others).	Rs. 1700/-

Total amount

Rs. 1700/-

2. The expenditure is debitable to Major Head "2052" Secretariat General Services 00.090 Secretariat Minor Head – 03. Ministry of Home Affairs – 03.00.28 – Professional Services under Grant 50 Ministry of Home Affairs for the year 2007 – 2008.

Amar Chand
(Amar Chand)

Under Secretary to the Govt. of India
Tele No. 2461 0466

Copy to :-

- (1) The Pay and Accounts Officer (Sectt), MHA, C-I, Hutments, Dalhousie Road, new Delhi.
- (2) Cash – I Section, Ministry of Home Affairs together with a copy of the sanction order in duplicate for arranging payment of Rs. 1700/- to Shri S K Malhotra, Deputy Secretary.
- (3) Shri S K Malhotra, DS (L) with the request to incur an expenditure of Rs. 1700/- for making a demand draft in favour of Registrar, High Court, Calcutta and claim reimbursement from Cash – I Section.
- (4) Cash – II Section, Ministry of Home Affairs, North Block, New Delhi, w.r.t. their Dy. No.1197 / 2008 – Cash-II dated 28.2.08.
- (5) Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta, 10 A, Dr. Kartik Bose Street, 1st Floor, Kolkata – 700 009.

Amar Chand
(Amar Chand)

Under Secretary to the Govt. of India

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

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Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

By Hand

Through Mr. Naresh Jaiswal, Section Officer

The 05th March, 2008.

To
The Deputy Secretary to the
Government of India,
Ministry of Home Affairs,
I. S. Division, Room No. 2, 9th floor,
Lok Nayak Bhawan, Khan Market,
New Delhi - 110 003

Your Ref. No. 1204/12/07-cdn dated 29th February, 2008

Re : Preparation of affidavit and filing the same and an A/c
Payee Draft for Rs. 1700/- in Calcutta High Court as
per order dated 15.02.2008 in
W. P. No: 27541 (W) of 2006
Sri Ashim Ganguly & Anr.Petitioners
-Vs-
Union of India & Ors.Respondents.

Memo of Expenses is to be reimbursed.

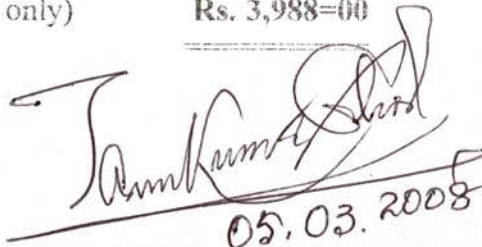
Cost of Postage, expenses for sending Xerox copy of writ
petition along with supplementary affidavit of the petitioners,
charges for Xerox copies, expenses for Typing of opposition
(seven sets), cost of Court fees, charges for affirmation of
opposition on 05.03.2008 and service of copy of opposition to
the petitioners.

Rs. 3,988=00

(Rupees Three thousand nine hundred eighty eight only)

Rs. 3,988=00

Please pay by an A/c Payee Draft in the name of
TARUN KUMAR GHOSH


05.03.2008
(TARUN KUMAR GHOSH)
Advocate.

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By speed per A60

(153)

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

To,

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, Calcutta.
38 /2, Lal Lajpat Rai Sarani,
Kolkata – 700 020.

03 MAR 2008

Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.

Dear Madam,

With reference to your letter dated 27th Nov, 2007 on the above subject, it is stated that since Netaji Research Bureau has been made a respondent (R – 5) in the said case, the Bureau may file a reply to the averments made in the para 16 of the Writ Petition indicating the position obtaining on the averment made about the research work on Netaji.

Yours faithfully,

(S K Malhotra)

Deputy Secretary to the Government of India
Tele No. 2469 7124

Copy to :-

03 MAR 2008

Shri Tarun Kumar Ghosh,
Advocate,
Bar Association,
Room No. 2, High Court,
Kolkata



D.I. 2
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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

W. P. No: 27541 (W) of 2006

In the matter of :

An application under Article 226 of the
Constitution of India;

-And-

In the matter of :

A Writ and/or writs in the nature of
Mandamus;

-And-

In the matter of :

A Writ and/or Writs in the nature of
Mandamus;

-And-

In the matter of :

A writ and/or writs in the nature of
Prohibition;

Contd.....P/2.

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-162
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:: 2 ::

-And-

In the matter of :

A writ and/or writs in the nature of
Certiorari;

-And-

In the matter of

Any other writ or writs, order or orders,
direction or directions;

-And-

In the matter of :

The Right to information Act, 2005;

-And-

In the matter of :

The Commission of Inquiry Act, 1952 and
Rules framed thereunder;

-And-

In the matter of :

The Public Records Act, 1993;

Contd.....P/3.

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:: 3 ::

-And-

In the matter of :

Violation of the provisions of Article 14, 19
(i) (a), 51A(b) and 21 of the Constitution of
India;

-And-

In the matter of :

Apathetic attitude of the concerned
authorities in considering the representation
dated 27.09.2006;

-And-

In the matter of :

Illegal and arbitrary decision of the
concerned Respondents for continuous
wasteful expenditure of public Money from
the Government Exchequer for maintenance
of so-called alleged ashes of Netaji Subhas
Chandra Bose kept in the Renkoji Temple in
Tokyo, Japan;

-And-

Contd.....P/4.

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:: 4 ::

In the matter of :

Non-acceptance of report of Justice Mukherjee Commission constituted to find out the clue of alleged death of Netaji Subhas Chandra Bose allegedly took place in Plane Crash on 18.8.1945;

-And-

In the matter of :

Arbitrary and whimsical decision of withholding the Mukherjee Commission's Report and not placing the same before the members of Parliament for open debate of discussion.

-And-

In the matter of :

Deliberate and willful contravention of the provisions for maintenance of Public Records by the concerned Government and gross dereliction of duties and serious consequences of damage and/or destruction

Contd.....P/5.

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:: 5 ::

of the same;

-And-

In the matter of :

1. SRI ASHIM KUMAR GANGULY,

son of Late Netai Chandra Ganguly, residing
at 90, A. K. Mukherjee Road, 3rd floor,
Police Station Baranagar, Kolkata-700 090.

2. SRI SUBHASH CHANDRA BASU

son of Late Surendra Nath Basu, residing at
86, Sardar Bosi Lane, Police Station and
District-Howrah, Pin Code No. 711 101;

..... Petitioners.

-Versus-

1. Union of India,

service through the Secretary, Ministry of
Home Affairs (North Block), Government of
India, New Delhi.

2. Principal Secretary,

Office of the Prime Minister, Government of
India, 7, Race Course Road, New Delhi.

Contd.....P/6.

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:: 6 ::

3. Secretary,

Ministry of Foreign Affairs, Government of
India, New Delhi.

4. Secretary,

Ministry of Parliamentary Affairs,
Government of India, New Delhi.

5. Director

Netaji Research Bureau,
38/2, Lala Lajpat Roy Road, Kolkata-20.

.....Respondents.

AFFIDAVIT – IN - OPPOSITION ON BEHALF
OF THE RESPONDENTS HEREINABOVE

I, Naresh Jaiswal son of Shri K. Choudhary, aged about 44 years, by occupation Service under Government of India and posted in New Delhi residing at No. 111-P, Type-III Quarters, Aram Bagh, Paharganj, New Delhi-110 055, do hereby solemnly affirm and say as follows :

1. I am one of the Principal Officer of the respondents as such I am competent to swear this affidavit. I know the facts and circumstances of the case. I have also been authorized to affirm this affidavit on behalf of all the respondents and am otherwise competent to depose to the same.

Contd.....P/7.

2. That I have come to know that the instant writ petition was heard on 15.02.2008 before Their Lordships the Hon'ble Chief Justice Mr. Surinder Singh Nijjar and the Hon'ble Justice Pinaki Chandra Ghose for filing affidavit-in-opposition.

3. I have read a copy of the writ petition affirmed by the writ petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and I have understood the contents of the same.

4. Before dealing with all paragraphs in the writ petition, at the outset, I state that the instant writ petition is not maintainable under Article 226 of the Constitution of India.

5. With regard to the statement made in paragraphs 1 to 4, 7 & 21 of the writ petition, I state that those are matters of record are admitted and deny and dispute those which are contrary to and inconsistent with the said records.

6. With regard to the statement made in paragraphs 5 of the writ petition, I state that the averments relating to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose, it is stated that the decision to award Bharat Ratna was taken in January, 1992, in view of his public service of the highest order. Keeping in view the widespread public reaction and sentiments of the people and to avoid unnecessary controversy, Government of India decided, notwithstanding the earlier announcement, not to take any further action in the matter. It is stated that

the Hon'ble Supreme Court also recorded in its order dated 4.8.1997 that "The real controversy in these proceedings relates to the press communiqué. Since no further steps have been taken pursuant to the press communiqué and the matter is treated as closed, we declare that the press communiqué should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of". Regarding bringing the ashes of Netaji Subhas Chandra Bose Kept in the Renkoji Temple, Japan, to India by Ministry of Defence, it is stated that there is no proposal before the Ministry of Defence to bring back the ashes of Netaji to India.

7. With regard to the statement made in paragraphs 6 of the writ petition, I state that Justice Mukherjee Commission of Inquiry was set up by Ministry of Home Affairs vide Notification dated 14th may, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :

- a) whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the plane crash, as alleged;
- c) whether the ashes in the Japanese temple are ashes of Netaji;
- d) whether he has died in any other manner at any other place and, if so, when and how;

:: 9 ::

e) if he is alive, in respect of his whereabouts.

8. With regard to the statement made in paragraphs 8 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission was examined thoroughly and it was observed that Commission's inquiry was inconclusive in many ways, unable to provide a definitive finding on several issues and at variance with past well accepted inquiry Commissions' findings in some critical areas. It is further submitted that Justice Mukherjee Commission did not provide any finding on point at Sub-para (d) of terms of reference mentioned in reply to para 6 above. Thus, Governemnt of India did not find it possible to accept the findings of the Justice Mukherjee Commission that a) Netaji did not die in the plane crash; and b) the ashes in the Renkoji Temple were not of Netaji and it has accordingly been reflected in the Action Taken Report laid before the Houses of Parliament.

9. With regard to the statement made in paragraphs 9 of the writ petition, it is reiterated that Governemt of India was not able to accept the report of the Justice Mukherjee Commission in asmuch as the inquiry was found to be inconclusive in many ways and it had not been able to provide definite findings on several issues as mentioned in reply to para 8 above. It is further submitted that though the Justice Mukherjee Commission concluded that Netaji was dead but he did not die in plane crash, the Commission did not answer the point (d) of terms of reference which required the Commission to find out "Whether he has died in any

other manner at any other place and it so, when and how. The commission on point (d) only said that in the absence of any clinching evidence a positive answer cannot be given. It is denied that Government of India had any control and supervision on the working of earlier Committee and Commission. It is submitted that the earlier Committee and Commission inquired into the matter independently and came out with their own independent findings. It is also submitted that like the Justice Mukherjee Commission, Khosla Commission was also appointed under the Commissions of Inquiry Act, 1952. It is further submitted that although Shah Nawaz Committee could not visit Formosa as India had no diplomatic relations with that country at that time, Khosla Commission visited Taiwan (formerly known as Formosa) in connection with the inquiry and this has been recorded in Chapter Eight of its report.

10. With regard to the statement made in paragraphs 10 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission along with the Action Taken Report was placed before both the Houses of Parliament on 17th May, 2006, as required under section 3(4) of the Commissions of Inquiry Act, 1952. It is denied and disputed that Government of India had no interest in the matter, as alleged. It is submitted that Government of India extended full cooperation to the Justice Mukherjee Commission of inquiry into the alleged disappearance of Netaji Subhas Chandra Bose as required from time to time.

11. With regard to the statement made in paragraphs 11 of the writ petition, it is submitted that Government of India appointed the Justice Mukherjee Commission of Inquiry under the Commission of Enquiry Act, 1952. It is further submitted that the Government of India treated this matter of public importance by issuing said Notification dated 14th May, 1999 appointing Justice Mukherjee Commission of Inquiry, which states that "the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose". After scrutinizing of the Justice Mukherjee Commission Report, the Government of India submitted an Action Taken Report and placed the same along with the report before the Parliament.

12. With regard to the statement made in paragraphs 12 of the writ petition, I state that the Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo. With regard to the averment about expenditure from public exchequer on research work on Netaji. It is submitted that Netaji Research Bureau is an internationally known Institute of History, Politics and International Relations established in 1957. Netaji Research Bureau is celebrating its Golden Jubilee anniversary in the year 2007-2008. The Founder Director of Netaji Research Bureau Dr. Sisir Kumar Bose had collected materials

on the life of his uncle Netaji Subhas Chandra Bose from all over the world for many decades. Apart from a very rich archives the Bureau has a museum and preserved rooms of Netaji which are visited by hundreds of people throughout the year. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has also produced documentaries and audio cassettes on him. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. It is run by a body of distinguished persons.

13. With regard to the statement made in paragraphs 13 of the writ petition, I state that there is any vested interest to 'uphold' the earlier reports. It is stated that the Government of India accepted the earlier reports as they were well reasoned in comparison to the JMCI report which did not give complete findings on the terms of reference especially point at (d) of terms of reference as explained in reply to para 9 herein above.

14. With regard to the statement made in paragraphs 14 of the writ petition, I state that the averments made in this para are denied. It is submitted that the Government of India extended full cooperation to the Justice Mukherjee Commission and produced all available records/documents before it. It is submitted that records in the Government of India offices are destroyed/weeded out strictly as per the record retention schedule.

15. With regard to the statement made in paragraphs 15 of the writ petition, I state that it is denied that the Government of India is spending money to maintain the ashes kept in the Renkoji Temple, Tokyo. The report of the JMCI has already been placed before Parliament on 17th May, 2006.

16. With regard to the statement made in paragraphs 17 & 18 of the writ petition, it is reiterated that Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo. It is also stated that there is no proposal between Government of India and the Government of Japan regarding return of the ashes to India including handling over of ashes to the daughter of Netaji, as averred.

17. With regard to the statement made in paragraphs 19 of the writ petition, I state that the averments made in this para are denied. Government of India attaches high importance to Netaji Subhas Chandra Bose. The JMCI report has already been discussed in Parliament.

18. With regard to the statement made in paragraphs 20 and 22 of the writ petition, it is submitted that Government of India has submitted the Action Taken Report before the Parliament. Save and except which is stated in the Action Taken Report the allegations in the writ petition are denied.

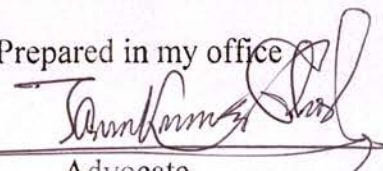
19. With regard to the statement made in paragraphs 23 of the writ petition, it is submitted that in view of the fact, the petitioners have not been able to make

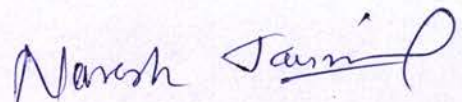
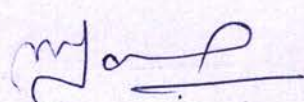
out any convincing case in this writ petition, no relief should be allowed/granted to them.

20. With regard to the statement made in paragraphs 24 of the writ petition, it is stated that (i) the report of the Justice Mukherjee Commission has already been placed before both the Houses of Parliament.

21. The statements contained in paragraphs 5 to 20 of the Affidavit-in-opposition to the writ petition of the petitioners are true to my knowledge and derived from the available relevant records and rests are my respectful submission before this Hon'ble Court.

Prepared in my office


Advocate.

The deponent is known to me

Clerk to Mr. Tarun Kumar Ghosh,
Advocate.

Solemnly affirmed before me on
this the day of March, 2008.

Commissioner

16768
187
DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W. P. No: 27541 (W) of 2006

In the matter of :

An application under Article 226 of the
Constitution of India;

- And -

In the matter of :

Sri Ashim Kumar Ganguly & Anr.

.....Petitioners

-Versus-

Union of India & Ors.

.....Respondents.

AFFIDAVIT – IN - OPPOSITION ON
BEHALF OF THE RESPONDENTS.

Mr. Tarun Kumar Ghosh,

Advocate.

Bar Association, Room No. 2,

High Court, Calcutta.

Office at 10-A, Dr. Kartick Bose Street,

1st floor, Kolkata – 700 009.

Phone : 2350-9128 & 2351-2988.

188

1965
1968


Dy. No. 2357 dt. 13.02.2008
MINISTRY OF HOME AFFAIRS
(CASH-I SECTION)
....

Sanction Order No. 12014/12/07-Cdn dt. 29.02.2008 for Rs. 1,700/- is returned herewith with the remarks (tick-marked) below:-

<u>Sl.No.</u>	<u>Remarks</u>
a.	Sanction Order (2 copies) may be signed in ink by concerned Under Secretary as only the Photostat copies of the sanction have been received.
b.	
c.	One spare copy of the Sanction Order, duly signed in ink, may be enclosed.
d.	The Head of Account indicated in the Sanction Order may be corrected as
e.	Sanction Order may be revised by rounding-off the amount to the nearest rupee.
f.	Sanction Order is not legible/corrections made in the Sanction Order may be attested.
g.	Bill in duplicate (Original bill as well as the duplicate copy) in respect of Department of Publication, Government of India Press Ministry of Home Affairs may be enclosed as only original bill has been received been received along with the sanction.
h.	Certificate made at the back of the bill may be attested.
i.	The year of the sanction may kindly be corrected as 2007-2008 instead 2006-07 as mentioned.
j.	No appropriation has been made under the sanctioned budgetary head for the current financial year.

2. It is requested that appropriate action on the point marked at (a) may be taken and these may be sent to this Section **URGENTLY**, so as to enable this Section to take further necessary action in the matter.

Encl: as above.


(S.C. Bhatia)
Section Officer (Cash-I)
13.03.2008

Shri Amar Chand, Under Secretary, IS Division, Cdn Section, Lok Nayak Bhawan.

13/3
Sh. Narsh

1209
2357 / Cash I
14/3/08
12/3
No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

ORDER

Sanction of the Head of the Department is hereby conveyed to the payment of Rs. 1700/- (rupees one thousand seven hundred only) to the **Registrar, High Court, Calcutta** in connection with the following Court cases (s).

S.No.	Case No.	Amount
(1)	WP No. 27541 of 2006 (Ashim Kumar Gaungly Vs UOI and Others).	Rs. 1700/-

Total amount

Rs. 1700/-

2. The expenditure is debitable to Major Head "2052" Secretariat General Services 00.090 Secretariat Minor Head – 03. Ministry of Home Affairs – 03.00.28 – Professional Services under Grant 50 Ministry of Home Affairs for the year 2007 – 2008.

Amar Chand
(Amar Chand)

Under Secretary to the Govt. of India
Tele No. 2461 0466

Copy to :-

- (1) The Pay and Accounts Officer (Sectt), MHA, C-I, Hutments, Dalhousie Road, new Delhi.
- ✓ (2) Cash – I Section, Ministry of Home Affairs together with a copy of the sanction order in duplicate for arranging payment of Rs. 1700/- to Shri S K Malhotra, Deputy Secretary.
- (3) Shri S K Malhotra, DS (L) with the request to incur an expenditure of Rs. 1700/- for making a demand draft in favour of Registrar, High Court, Calcutta and claim reimbursement from Cash – I Section.
- (4) Cash – II Section, Ministry of Home Affairs, North Block, New Delhi, w.r.t. their Dy. No.1197 / 2008 – Cash-II dated 28.2.08.
- (5) Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta, 10 A, Dr. Kartik Bose Street, 1st Floor, Kolkata – 700 009.

Amar Chand

Notes from p.3/ante may kindly be glanced through to recall the background of this case.

2. W.P. No.2754 of 2006 (PIL) filed by Shri Ashim Ganguly & Another, against UOI & Ors. is under process on this file. A copy of the W.P. is available at pp.38- /c.

3. While UOI, MHA was still in the process of finalizing its response to the petition received in the Ministry in September 2007, an order has been passed by High Court of Kolkata on 15.2.2008 allowing 2 weeks time to UOI for filing its response and simultaneously imposed a cost of 100 gms. (Rs.1700/-). While the order does not specify the reasons for which the court has imposed the cost, it appears that it is primarily on ground of delay. As the things stand, this Ministry was in the process of obtaining material from other constituents of UOI such as MOD, MEA etc. so as to file a comprehensive response to each of the points raised in the W.P. The process of obtaining material was, by and large, completed on 16th January with the reply of Public Section, MHA and our draft parawise comments have also been framed and are placed on file.

4. Although the advocate (Sh Tarun K Ghosh at Kolkatta) has advised us to preferably file an SLP before the Hon Supreme Court, (without specifying cogent reasons) it is felt that the desirability or otherwise of filing an SLP or alternatively agitating on the imposition of cost of 100 gms. by the Hon'ble High Court, Kolkata, the following facts which are relevant may be kept in view :

- i) It is a fact that period of 6 months have already been consumed for framing UOI's response to the W.P.;
- ii) Order dated 15.2.2008 is apparently an interlocutory order and not a final order on the WP. Normally, appeals do not lie against such interlocutory orders. Besides, in any case the factual position can be ascertained from M/Law by seeking their advice. However, the fact remains that cost of agitating the matter through an SLP would in any case be **many times more** than paying the cost itself.

5. As desired by JS(CS) (L.O. of JS(IS), undersigned discussed this matter over telephone with Sr. Counsel, Shri RN Das. On appraisal of the above facts, Shri Das was of the considered opinion that filing an SLP/ review/recall application in this case does not appear advisable.

6. In view of the foregoing position, the following steps are recommended:

- i) JS may kindly approve (i) payment of cost of Rs.1700 of High Court Kolkata; and (ii) the draft parawise comments already on file
- ii) Deputing Shri N. Jaiswal, Section Officer to Kolkata to meet the Govt. Counsel along with
 - a) The DD for the amount of the cost and;
 - b) Parawise comments for preparation of an affidavit in proper form which may be filed by Shri Jaiswal at Kolkatta immediately.

hkd.

(S.K. Malhotra)
Deputy Secretary(L)
28.02.2008

JS(CS) - L.O. of JS(IS)

Spoken to HS
on 27/12/08

28/2/08

① All formalities to engage R.N. Das senior counsel who is already engaged in another similar may be done immediately ~~in case~~ by observing all formalities.

② It is better to pay Rs. 700/- than file SLP which may not succeed and also more costly.

③ The delay is due to non-receipt of petition in time (filed in court in December 2006 and received in MHA in ^{Sept} Oct 2007) and also need to consult other Ministries.

④ Para-wise prepared may be sent with S.O. to R.N. Das along with DD by air. 28/2/08

I agree all further action be taken most urgently.

CF. 366/08/175
28/2

192

180
172

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 29th Feb, 2008.

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Amar Chand
(Amar Chand)

Under Secretary to the Govt. of India
Tele No. 2461 0466

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Amar Chand

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6. In view of the foregoing position, the following steps are recommended:

- i) JS may kindly approve (i) payment of cost of Rs.1700 of High Court Kolkata; and (ii) the draft parawise comments already on file
- ii) Deputing Shri N. Jaiswal, Section Officer to Kolkata to meet the Govt. Counsel along with
 - a) The DD for the amount of the cost and;
 - b) Parawise comments for preparation of an affidavit in proper form which may be filed by Shri Jaiswal at Kolkatta immediately.

L
h.s.d.

(S.K. Malhotra)
Deputy Secretary(L)
28.02.2008

JS(CS) - L.O. of JS(IS)

Spoken to HS
on 27/2/08

[Signature]
28/2/08

① All formalities to engage R.N. Das senior counsel who is already engaged in another similar may be done immediately ~~in case~~ by observing all formalities.

② It is better to pay Rs. 1700/- than file SLP which may not succeed and also more costly.

③ The delay is due to non-receipt of petition in time (filed in court in December 2006 and received in MHA in ^{Sept} Oct 2007) and also need to consult other Ministries.

④ Para-wise prepared may be sent with S.O. to R.N. Das along with DD by air *[Signature]*
28/2/08

I agree
all further
action be taken
most urgently
11/2/08

CF 366/08/175
28/2

198

183
175

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506060

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

To

Mr. S. K. Malhotra,

Deputy Secretary to the Govt. of India,

Ministry of Home Affairs.

IS Division, Cdn Section.

9th floor, Room No. 2.

Lok Nayak Bhawan, Khan Market,

New Delhi - 110003.

The 18th March, 2008.

By Fax and Registered with A/D Post.

Fax No. 011/24617196

Ref. File No. : 1204 Home/06/III dt. 21.12.2006 and 1204 Home 06/III/1824 dt. 30.07.2007 and Letter Ref. No. 1/2014-12-2007-Cdn., Govt. of India, Ministry of Home Affairs, Lok Nayak Bhawan, Khan Market, New Delhi-110 003 dt. October 12, 2007.

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

**Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.**

Dear Sir,

This is to inform you that Mr. Naresh Jaiswal, Section Officer, MHA came to this Hon'ble High Court, Calcutta and hold a conference with the undersigned by furnishing parawise comments to the petition on 03rd March, 2008 for preparation of affidavit-in-opposition.

Accordingly, I drafted the opposition and vetted the same by the I.d. Special Counsel Mr. R. N. Das on 04th March, 2008. The opposition has been affirmed by Mr. Naresh Jaiswal, Section Officer, MHA on 05th March, 2008 before the Commissioner of Affidavit, High Court, Appellate Side, Calcutta.

Barring the above fact, Mr. Naresh Jaiswal handed over an A/c Payee Demand Draft dated 01.03.2008 being No. DB/L 260605 drawn on Dena Bank for Rs. 1,700/- (Rupees One thousand seven hundred) in the name of Registrar, High Court, Calcutta for depositing the cost as per order dated 15th February, 2008. Accordingly, I sent my clerk to the concerned department for depositing the same but declined to accept on

Contd.....P/2.

Room No. 20, Lawyers Chamber, Supreme Court Compound, New Delhi - 110 001

18/03/08

FROM : 0332831001 40056020 FAX NO. : 0332831001 40056020 Mar. 18 2008 10:54AM P1

FROM : 0332831001 40056020

Tarun Kumar Ghosh

Advocate,
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@calcutta.net.in

Chamber : 2350-9128 & 2351 2988

Mobile : 9433506066

Fax No: (033) 2350 9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

The 18th March, 2008.

:: 2 ::

the ground out of time. As such, on availability of the Division Bench I mentioned the matter and prayed for extension of time before Their Lordships The Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Pinaki Chandra Ghose on 07.03.2008. Such prayer was allowed.

Despite the fact, the aforesaid draft could not be deposited because the draft should be in the name of Registrar General instead of Registrar.

On the issue of depositing the cost, Mr. Naresh Jaiswal, Section Officer made a telephonic call to the undersigned on 14.03.2008 requesting to make payment of cost to the Hon'ble High Court, Calcutta as per extension of order dated 07.03.2008. As such, I am depositing the above cost on your behalf to the Hon'ble High Court, Calcutta by an A/c Payee Cheque being No. 977924 dated 17.03.2008 drawn on United Bank of India, High Court Branch, Kolkata-700 001 in the name of the Registrar General. I am enclosing herewith photo copy of aforesaid A/c Payee Cheque for your record and reimbursement to the undersigned by an A/c Payee Demand Draft payable at Calcutta immediately. I am also enclosing herewith your demand draft No. DB/L. 260605 dated 01.03.2008 drawn on Dena Bank in the name of the Registrar, High Court, Calcutta for Rs. 1,700/- (Rupees One thousand seven hundred) for your record and doing the needful.

Thanking You.

Encl : As stated above.

Copy to : By Hand/Through Special Messenger

Yours faithfully,

The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

(TARUN KUMAR GHOSH)
Advocate.

For information and necessary action.

197
SPEED POST
No. 1204/Home/06-III | 4787 | 209 |
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

Speed Post.

Date :- 14.3.08

✓
To
Sri S.K. Malhotra
Dy. Secretary
Ministry of Home Affairs
IS Division
CDN Section
9th floor, Lok Nayak Bhawan
Khan Market
New Delhi.

Sub:- WP No. 27541(W) of 06
Sh. Ashim Kr. Ganguly & Ors.
-Vs-
UOI & Ors.

Sir,

Please refer to your letter dt. 29.2.08
and letter from this office dt. 5.3.08. This is
to inform you that Sri R.N. Das, Spl. Counsel
has been engaged in the aforesaid matter.

You are requested to send copy of the
Writ Petition, brief history, para-wise comments
and necessary instruction immediately for further
necessary action.

What is the position?

Yours faithfully,

Y 14/3/08
us(A)
SO(CDN)

(G.S. Makker)
Jr.CGA

CC to:-

1. Sri R.N. Das, Advocate, High Court, Calcutta. End. Original
2. Sri Tarun Kr. Ghosh, Advocate, High Court, Calcutta.

Jr.CGA

प्रेषक देना बैंक FROM DENA BANK

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शाखा
Alankhor

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"रु. 25,000/- से कम"

"Below Rs. 25,000/-"

DB/L 260605

***1700.00

NOT OVER Rs.
01-03-2008

मौग क्रिये जानेपर प्राप्त राशि के निमित्त

On demand pay

REGISTRAR HIGH COURT CALCUTTA*

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देना बैंक
DENA BANK

SERVICE BR-CALCUTTA(SBCALC)

DB/L

लेखाकार Accountant

शाखा प्रबन्धक Branch Manager

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MAHARAJA SECURITY PRINTERS, CHENNAI

जारी होने की तारीख से छ महीने तक वैध
Valid for 6 Months from date of Issue

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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

ORDER

In partial modification of this Ministry's order of even number dated 29th Feb, 2008, sanction of the Head of the Department is hereby conveyed to the payment of Rs. 1700/- (rupees one thousand seven hundred only) to the **Registrar General, High Court, Calcutta** towards the cost imposed by the High Court in the following court case :-

S.No.	Case No.	Amount
(1)	WP No. 27541 of 2006 (Ashim Kumar Gaungly Vs UOI and Others).	Rs. 1700/-

Total amount

Rs. 1700/-

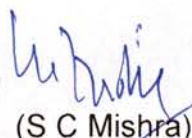
2. The expenditure is debitabale to Major Head "2052" Secretariat General Services 00.090 Secretariat Minor Head – 03 Ministry of Home Affairs – 03.00.28 – Professional Services under Grant 50 Ministry of Home Affairs for the year 2007 – 2008.


(S.C. Mishra)

Under Secretary to the Govt. of India
Tele No. 2461 0466

Copy to :-

1. The Pay and Accounts Officer (Sectt), MHA, C-I, Hutments, Dalhousie Road, New Delhi.
2. Cash – I Section, Ministry of Home Affairs together with a copy of the sanction order in duplicate for arranging re-imbursement of Rs. 1700/- to Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata by an account payee demand draft payable at Calcutta as he has already paid the cost from his own account on our advice, due to urgency.
3. Cash – II Section, Ministry of Home Affairs, North Block, New Delhi, w.r.t. their Dy. No.1197 / 2008 – Cash-II dated 28.2.08.
4. Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta, 10 A, Dr. Kartik Bose Street, 1st Floor, Kolkata – 700 009.


(S C Mishra)

Under Secretary to the Govt. of India

200

128
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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

To,

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, ~~Calcutta~~.
38 /2, Lal Lajpat Rai Sarani,
Kolkata – 700 020.

**Subject: W.P. No. 27541 (W) of 06 titled Shri Ashim Kumar
Ganguly & Anr Vs UOI and Ors before Hon'ble High Court of
Kolkata.**

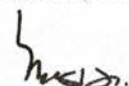
Dear Madam,

Please refer to the discussions held by Shri Naresh Jaiswal, Section Officer, M.H.A. with you on 3.3.2008 in your office at Kolkata regarding filing of reply by you against the averments made in W.P. 27541 (W) of 2006 about research work on Netaji on the above subject.

2. The inputs provided by you on behalf of Netaji Research Bureau (Respondent No. 5) have been incorporated in para 12 of the affidavit, extracts of which are enclosed.

3. Kindly confirm the position incorporated in para 12 of the affidavit already filed by UOI.

Yours faithfully,



(S K Malhotra)
Deputy Secretary to the Government of India
Tele No. 2469 7124

201

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.



To,

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, ~~Calcutta~~.
38 /2, Lal Lajpat Rai Sarani,
Kolkata – 700 020.

27 MAR 2008

Subject: W.P. No. 27541 (W) of 06 titled Shri Ashim Kumar Ganguly & Anr Vs UOI and Ors before Hon'ble High Court of Kolkata.

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3. Kindly confirm the position incorporated in para 12 of the affidavit already filed by UOI.

Yours faithfully,

(Signature)

(S K Malhotra)
Deputy Secretary to the Government of India
Tele No. 2469 7124

202

Pl. 12511
27/3/08

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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

182
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9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

ORDER

27 MAR

In partial modification of this Ministry's order of even number dated 29th Feb, 2008, sanction of the Head of the Department is hereby conveyed to the payment of Rs. 1700/- (rupees one thousand seven hundred only) to the **Registrar General, High Court, Calcutta** towards the cost imposed by the High Court in the following court case :-

S.No.	Case No.	Amount
(1)	WP No. 27541 of 2006 (Ashim Kumar Gaungly Vs UOI and Others).	Rs. 1700/-

Total amount

Rs. 1700/-

2. The expenditure is debitable to Major Head "2052" Secretariat General Services 00.090 Secretariat Minor Head – 03 Ministry of Home Affairs – 03.00.28 – Professional Services under Grant 50 Ministry of Home Affairs for the year 2007 – 2008.

W. Mishra
(S.C. Mishra)

Under Secretary to the Govt. of India
Tele No. 2461 0466

Copy to :-

27 MAR 2008

1. The Pay and Accounts Officer (Sectt), MHA, C-I, Hutments, Dalhousie Road, New Delhi.
2. Cash – I Section, Ministry of Home Affairs together with a copy of the sanction order in duplicate for arranging re-imbursement of Rs. 1700/- to Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata by an account payee demand draft payable at Calcutta as he has already paid the cost from his own account on our advice, due to urgency.
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4. Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta, 10 A, Dr. Kartik Bose Street, 1st Floor, Kolkata – 700 009.

जारी किया
ISSUED 3

27 MAR 2008

Ministry of Home Affairs
New Delhi

W. Mishra
(S C Mishra)

Under Secretary to the Govt. of India

203 Dy No 3179/Cash
Cash - I Most Immediate
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Section No. 12014/12/07. Cdw dt. 26/07/03
is returned herewith with a request
to send the same along with the
Green Card for Rs. 1700/- & ~~for~~

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27/3

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Shri S. C. Mishra, Under Secretary, Coordination
Division, LNB.

a copy may be attached, as desired.

27/03

Ref. above.

As desired a copy is enclosed herewith.
for necessary action.

Smiting
31/3/08

Cash - I MHA

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31/3/08

204
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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

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(S.C. Mishra)

Under Secretary to the Govt. of India
Tele No. 2461 0466

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(S C Mishra)

Under Secretary to the Govt. of India

208

185
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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

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Under Secretary to the Govt. of India
Tele No. 2461 0466

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(S C Mishra)

Under Secretary to the Govt. of India

31	15.02.08
----	----------

W.P. 27541 (W) of 2007

Mr. Subhas Chandra Basu.

....Petitioner.

Mr. Tarun Kumar Ghosh.

...For U.O.I.

The prayer of the learned counsel appearing on behalf of Union of India to extend the time for filing the affidavit-in-opposition is accepted, in the interest of justice. We are, however, of the opinion that this is a fit case for imposing costs on Union of India. We direct that the affidavit-in-opposition may now be filed within a period of two weeks from date, on payment of 100 Gms. as costs. Reply thereto, if any, may be filed one week thereafter.

Let the matter appear in the list three weeks hence.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties on usual undertaking.

Sd/- (SURINDER SINGH NIJJAR, C.J.)

(PINAKI CHANDRA GHOSE, J.)

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100 Gms = Rs 1700/- (Seventeen hundred only)

31/8/08
(NARESH JAIN)

207
IMMEDIATE (187/195)

Dy. No. 3179/Cash I
Ministry of Home Affairs
(Cash-I Section)
...

As the enclosed sanction bearing No. 12014/12/07-Cdn dt. 26/03/2008 issued in favour of Registrar General, High Court Calcutta for Rs. 1,700/- could not be processed during 2007-08, the same is returned herewith. It is requested that the grant No. and year of sanction may kindly be changed as 51 and 2008-09 respectively and sent to us immediately for processing.

S. C. Bhatia
(S.C. Bhatia)
Section Officer
07.04.2008

Shri S.C. Mishra, Under Secretary, 9th Floor, Lok Nayak Bhawan, New Delhi.

17/04/08
SO (Cash-I)

The revised sanction order is placed for further necessary action.

S. C. Bhatia
10/4/08

Cash - I, MHA

O/c

Issued
Per Book 6 No. 2 (2007)
S. C. Bhatia
10/4/08

208 Dy No 3179/Cash
Cash - I Section
MHA
Most Immediate

Sanction No. 12014/12/07, dtd 26/07/03
is returned herewith with a request
to send the same along with the
Cashier's Order for Rs. 1700/-.

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Shri S. C. Mishra, Under Secretary, Coordination
Division, LNB.

a copy may be attached, as desired.

27/03

Ref. above.

As desired a copy is enclosed herewith.
for necessary action.

Singh
31/3/08

Cash - I, MHA

Salary
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27/03/08
80 (CON)

3179/Cash I
28/3/08

189

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

ORDER

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S.C. Mishra

(S.C. Mishra)

Under Secretary to the Govt. of India
Tele No. 2461 0466

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S.C. Mishra

(S C Mishra)

Under Secretary to the Govt. of India

210

(190
192)

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 26th March, 2008.

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(S.C. Mishra)

Under Secretary to the Govt. of India
Tele No. 2461 0466

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(S C Mishra)

Under Secretary to the Govt. of India

291

191
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Court Matter
TIME BOUND
MOST IMMEDIATE

3952/18/18/08
9/9
1812/Dir(15-11)/08
9/9


Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantrayala

Jaisalmer House, Mansingh Road
New Delhi - 110 011.

Subject : W.P. No.27541(W) of 2006 - Shri Ashim Ganguly & Anr & UOI & Ors.

In continuation to this Division's U.O. Note of even number dated 11.09.2007, please find enclosed herewith letter copy of order dated 15.2.2008 received from Ministry of Law & Justice, Kolkata, which is self-explanatory, is the concern of IS Division.

2. You are, therefore, requested to take appropriate action.


(N.M. Perumal)
Director (Judl)
Tel.No.23054185

✓
Shri D. Diptivilasa
Joint Secretary (IS)
Ministry of Home Affairs
North Block, New Delhi.

2
9/9
Dir (IS) urgent
+ 09/9
D.S. (Legal)

MHA I.D. No.23/7/2008(Vol.I)Pt(Dy.No.278).-Judl. & P.P. dated

Feb, 2008
9/9/08

h. above
The subject appears to be the
concern of Cdn. Section.

US(4)

11.12.08

Amulya to (Legal)
11/12/08

So (Copy)

307/Dis(2)/08
27/1/08

No. 1204/Home/06-III/4303
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

Date :- 21.2.08

To
Sri L.C. Goel
Jt. Secretary
Ministry of Home Affairs
IS Division
North Block
New Delhi.

Sub:-WP No. 27541(W) of 06
Sri Ashim Ganguly & Anr.
-Vs-
UOI & Ors.

Sir,

Enclosed please find herewith copy of letter dt. 10.2.2008 and copy of order dt. 15.2.2008 passed in the matter as received from our panel counsel Sri T.K. Ghosh, Advocate which speaks for itself.

You are requested to send brief history, para-wise comments and necessary instruction. You are also requested to depute one conversant officer to meet our panel counsel to do the needful. Mo is to be filed within two weeks from date of order, on payment of 100 Gms on 10.15. (Rs 1700/-)

Encl: As above.

Yours faithfully,

(G.S. Makker)
Jr.CGA

CC to:-

Sri N.M. Perumal, Director (Jug), Ministry of Home Affairs, Jaisalmer House, New Delhi.
Mansingh Road

2.Sri T.K. Ghosh, Advocate, High Court, Calcutta.

Jr.CGA

Court-278/2008 Prd & PP
3/3/08

Ref: our discuss

100 Gms means

Rs 1700/- This was

discussed with the officer on phone

SO (JPP)

VS (Legal)

Speedboat

26/2/08
Dir (Technical)

24/2/08

21/2/08
Jr.CGA

Tarun Kumar Ghosh

**Advocate.
High Court, Calcutta.**

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@calcmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

The 18th February, 2008.

To
1. **The Additional Government Counsel,**
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

By Hand

2. **Mr. S. K. Goswami,**
Under Secretary (ARMS) to the Govt. of India,
Ministry of Home Affairs,
Lok Nayak Bahavan, 9th floor,
Khan Market,
New Delhi - 110 003.

By Regd. With A/D.



Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007 and Letter Ref.
No. 1/12014/12/2007-Cdn., Govt. of India, Ministry of
Home Affairs, Lok Nayak Bhavan, Khan Market, New
Delhi-110 003 dt. October 12, 2007.

Re : **W. P. No: 27541 (W) of 2006**
Sri Ashim Ganguly & Anr.Petitioners.
-Vs-

Union of India & Ors.Respondents.
(The matter is pending in the Hon'ble High Court, Calcutta)

**Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.**

Dear Sir,

Kindly refer to my letter dated 11th September, 2007 about photo copy of writ
petition and photo copy of supplementary affidavit of the petitioners.

In view of the matter, I would like to place it on your record that the matter was
listed in the daily supplementary list dated 15th February, 2008 of Their Lordships The
Hon'ble Mr. Surinder Singh Nijjar, Chief Justice & the Hon'ble Justice
Pinaki Chandra Ghose. Accordingly, the matter was placed for hearing. At the time
of its call I appeared on your behalf. The matter was heard at length.

After hearing the Ld. Advocates for the respective parties Their Lordships were
pleased to award cost of Rs. 100 Gems for non filing of affidavit -in-opposition.
Further, Their Lordships allowed 4(four) weeks time as a last chance to file Affidavit-
in-Opposition in the matter.

Contd....P/2.

Room No. 20, Lawyers Chamber, Supreme Court Compound, New Delhi - 110 001.

100 GEMS =
Rs 1700/-

Cost-1700

214

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248 2313

E-mail : barasohc@calcmc.net.in

Chamber : 2350-9128 & 2351-2968

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,
1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

:: 2 ::

The 18th February, 2008.

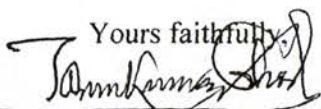
It is, therefore, requested you to take necessary steps so that the aforesaid direction be complied with in time.

In view of the matter, I am enclosing herewith photo copy of plain copy of order dated 15.02.2008 passed in the matter for your record and doing the needful.

Thanking You.

Encls.: As stated.

Yours faithfully,


(TARUN KUMAR GHOSH)

Advocate.

20.02.2008

218

125
203

up by Office
Associate

Serial
No

Date

Office notes, reports, Orders or proceedings with signature

31 15.02.08

W.P. 27541 (W) of 2007

Mr. Subhas Chandra Basu.

....Petitioner.

Mr. Tarun Kumar Ghosh.

...For U.O.I.

The prayer of the learned counsel appearing on behalf of Union of India to extend the time for filing the affidavit-in-opposition is accepted, in the interest of justice. We are, however, of the opinion that this is a fit case for imposing costs on Union of India. We direct that the affidavit-in-opposition may now be filed within a period of two weeks from date, on payment of 100 Gms. as costs. Reply thereto, if any, may be filed one week thereafter.

Let the matter appear in the list three weeks hence.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties on usual undertaking.

Sd/- (SURINDER SINGH NIJJAR, C.J.)

Sd/- (PINAKI CHANDRA GHOSE, J.)

Sd/-
20.2.08
Asst. Registrar
(Court)
Copy sent to the court
Registrar

216

SPEED POST

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No. 1204/Home/06-III
Ministry of Law and Justice
11, Strand Road, Kolkata-1.

Date :- 24.7.08

5212/Ds(2)/08
29/7/08

To
✓ Sri S.K. Malhotra
Dy. Secretary
Ministry of Home Affairs
IS Divn
CIN Section
9th floor,
Lok Nayak Bhavan
Khan Market
N. Delhi. - 3

Sub:- WP No. 27541(W) of 06
Sh.Ashim Kr.Ganguly & Ors.
-Vs-
UOI & Ors.

Sir,

Enclosed please find herewith copy of letter
14.7.08 and CAN Application No. 2133 of 08 in WP No.
27541(W) of 06 received from our panel counsel Sri
T.K. Ghosh, Advocate which speaks for itself.

You are requested to send necessary instruction
in the aforesaid matter for further necessary action.

Encl: As above.

Yours faithfully,

(G.S. Makker)
Jr.CGA

CC to:-

Sri Tarun Kr. Ghosh, Advocate, High Court, Calcutta:-He
is requested to inform the deptt. concerned under inti-
mation to this office about the specific instruction if
any required in the aforesaid matter.

Jr.CGA

Pl speaks.
A
29/7
So(Cdu)
W/LT
28/7

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@calcutta.net.in

Chamber : 2350-3128 & 2350-3128

Mobile : 9435500066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street

1st floor, Kolkata - 700 009

Visiting Hours : 10 am to 9 pm

By Hand

Through Special Messenger

The 14th July, 2008.

To

The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

Your Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007

Re : W. P. No: 27541 (W) of 2006
Sri Ashim Ganguly & Anr.Petitioners.
-Vs-
Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 18th March, 2008 addressed to Mr. S. K. Malhotra, Deputy Secretary to the Govt. of India, Ministry of Home Affairs, B. Division, Cdn Section, 9th floor, Room No. 2, Lok Nayak Bhawan, Khan Market, New Delhi - 110003 and a copy of the said letter forwarded to the Additional Government Counsel, Ministry of Law & Justice, Department of Legal Affairs, Branch Secretariat, 11, Strand Road, Kolkata - 700 001 about affidavit-in-opposition to this case.

However, the matter was listed in the daily supplementary list dated 11th July, 2008 of Their Lordships The Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Pinaki Chandra Ghose under the head "Hearing" and placed for hearing before Their Lordships on 11.07.2008 itself.

I myself along with Ld. Sr. Counsel Mr. R. N. Das appeared on your behalf at the time of its call and filed affidavit-in-opposition dated 05th March, 2008. The matter was heard and after hearing the Ld. Advocates for the respective parties an application for addition of parties filed by the Ld. Advocate Miss Debjani Ghosal allowed. Their Lordships directed that the matter will be placed for further hearing after 2(two) weeks.

Contd. ... P 2

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@calcmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 069.

Visiting Hours : 6 p.m. to 9 p.m.

:: 2 ::

The 14th July, 2008

In view of the matter, I am of the view that opposition is necessary to be filed on or before the next date of hearing against the contents of application for addition of parties file by the Ld. Advocate Miss Debjani Ghosal.

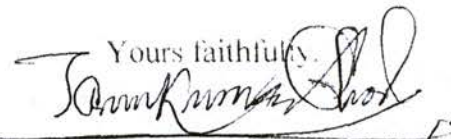
I am enclosing herewith a copy of application for addition of parties being CAN No. 2133 of 2008 for your consideration.

This is for your record and doing the needful.

Thanking You.

Encl: as stated above.

Yours faithfully,



(TARUN KUMAR GHOSH)

Advocate.

14.07.2008

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KOLKATA
DISTRICT-HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

CAN NO. 2133 OF 2008

W.P. NO. 27541 (W) OF 2006

IN THE MATTER OF

] An application for addition of parties

IN THE MATTER OF

Sri Ashim Kumar Ganguly & Anr

.....PETITIONERS

Verus

The Union of India and Ors

.....RESPONDENTS

IN THE MATTER OF

1. Sri Surajit Dasgupta, son of Late

Jatindra Mohan Dasgupta, by

occupation business, resident of

25/1, Guruprasad Chowdhury Lane,

P.S. Amherst Street, Kolkata-700 006

2. Shri Keshav Bhattacharjee, Advocate

son of *Late Basudev Bhattacharjee*

Bhattacharjee, Bar Association, Room

No. 4, High Court Calcutta;

3. Sri Nandalal Chakraborty, by

occupation, Head of the Department

of Political Science, Presidency

College, resident of 559/1, Dakshin

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Dari Road, P.S. lake Town, Kolkata-

700 048

4. Dr. Madhusudan Pal, by occupation

Assistant Professor, Calcutta Medical

College Hospital, resident of A/5/2,

Sharabani Abashan, Salt Lake, Sec-

III, Kolkata-700 009.

5. Sri Tarun Kumar Mukherjee son of

Late Gobindalal Mukherjee, resident

of 1, Brindaban Mullick 1st Lane,

1st Street, Kolkata-700

6. a tjit I gupta Late

Jatindra Mohan Dasgupta, resident of

222
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25/1 Guruprosad Chowdhury Lane,

P.S.- Amherst Street, Kolkata-700

006.

7. Sri Kusal Sankar Chowdhury son of

Chowdhury, resident of 32 B, Justice

Manmatha Mukherjee Row, P.S. -

Amherst Street, Kolkata-700 009.

8. Shri Siddheswar Bhattacharjee,

resident of Hatepara " Matri Bhavan",

P.O. Krishnnagar, Pin Code- 741 104,

District- Nadia

9. Shri Sunil Krishna Gupta, resident of

38, Vidyasagar Street, P.S.-Amherst

Street, Kolkata-700 009

.....APPLICANTS

To the Hon'ble Surrinder Singh Nijjar, the Chief Justice and his

Companion of Justices of the said Hon'ble Court

The humble petition of the above-named

Petitioners

Most Respectfully Sheweth

1. The Applicants are citizen of India and a part of the public of India.

The Applicants on several occasions have also espoused cause of the people in representative capacity on the subject "Netaji Subhas Chandra Bose", as described herein below. The people at large from all corner of the country including West Bengal have encouraged and requested the applicants to espouse the cause on the subject "Netaji Subhas Chandra Bose" to prevent mischievous role played by the respondent/Government of India and others in unleashing misformation about Netaji Subhas Chandra Bose, as such the Applicants are moving the instant application for addition of parties.

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2. The Applicants ~~have voluntarily~~ have voluntarily engaged themselves in research work on Netaji Subhas Chandra Bose for more than last 25 years at their cost and sacrifice,. The applicants moved before the Hon'ble Supreme Court of India, under Article 32 of the Constitution of India, challenging the conferment of the "Posthumous Bharat Ratna" award to Netaji Subhas Chandra Bose. The Division Bench consisting of the Hon'ble Justice Sujata. V . Monohar and the Hon'ble Justice G.B.Pattanaik upon hearing at length cancelled the said "posthumous" award.

The applicants also filed a Writ Petition, as a Public Interest Litigation through one of their associate before the Hon'ble Calcutta High Court, being W.P. No. 281 of 1998 praying interalia for direction to set up a Commission of Inquiry to give a clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Hon'ble Division Bench consisting of the Hon'ble Chief Justice Prabha Sankar Mishra (as his Lordship then was) and the Hon'ble Justice Bhaskar

Bhattacharyya directed the Government of India to set up an Inquiry Commission to give clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Government of India was compelled to set up such Inquiry Commission by appointing a retired judge of the Hon'ble Supreme Court of India Sri Manoj Kumar Mukherjee as Chairman of the Commission.

3. The applicants moved before the Justice Mukherjee Commission of Inquiry on the mysterious disappearance of Netaji Subhas Chandra Bose and have submitted volume of documents, which have been obtained from National Archives as well as from foreign countries which are authentic and genuine. He said the commission has also relied upon the statements the documents filed by the applicants, with much evidence which were admitted by the Government of India.

4. That the applicants are working with an object inter alia to preach, promote and propagate the great humanistic ideals, thoughts and sacrifice of Netaji Subhas Chandra Bose in the making of modern India among the people at large and also to eradicate misinformation campaign for distortion of history.
5. The applicants have sufficient interest in the subject matter, as they have carried out extensive research work on the subject matter of mysterious disappearance of Netaji Subhas Chandra Bose and came across several important secret documents which could unfold the mystery of Netaji's disappearance.
6. The only misleading documents to establish the alleged death of Netaji Subhas Chandra Bose is Death certificate and cremation permit in Japanese language which on translation appears to be a death certificate of one Ichiro Okuro

7. The Government of India till date never disclosed their stand that it has any record to establish that Netaji Subhas Chandra Bose died in the alleged aircrash on August 18, 1945 and the ashes kept in the Renkoji Temple are that of Netaji Subhas Chandra Bose. On the contrary, Learned Senior Counsel of the Government of India made an unambiguous submission before the Division bench of this Hon'ble court to the effect that;

" the Government of India has been maintained and is maintaining even now that a further /fresh enquiry /prove is required and the information that Netaji died in the plane crash on August 18, 1945 is full of loopholes ,contradictions and therefore inconclusive ".

The above mentioned submissions of the Learned senior Counsel
for the Government of India has been reported in AIR 1999
Calcutta-9 .

8.The documents and records in category marked as top secret
records maintained by the Government of India reveals as follows:-

i) File No. 23(ii)/56-57 PM

A secret note of Shri M.O Mathai dated 2/12/1954
communicating to the Joint Secretary (AD), Government of
India to the effect that ;

*"A small amount of Rs. 200/- and odd was received by
the Minister of External Affairs from our Embassy in
Tokyo along with the ashes and other remains of the
Late Shri Subhas Chandra Bose".*

It is crystal clear that the ashes initially kept in the Renkoji Temple has been taken back to India, possibly the genuineness of the ashes was doubtful. The ashes now kept in the Renkoji Temple are not the alleged ashes of Netaji Subhas Chandra Bose.

ii) Parliament proceeding Records

The then Prime Minister Shri Moraji Desai on 28th August, 1978 on the floor of the Parliament declared that;

" there have been two enquires into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a committee presided over by Major-General Shah Nawaz Khan and the second by a one-man Commission of Inquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee

and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed, some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive

iii) File No. 800/6/C/1/90-Pol

A note of Meera Shankar, the Director of Prime Minister Office dated 23rd August 1990, on the proposal of Mr. Shanti Lal Patel a member of Parliament for bringing back the alleged ashes from Japan to India states in *lia* that:

"However Shri S.C. Bose again wrote to Prime Minister

Smt. Indira Gandhi saying that there was no convincing

proof that the so called ashes were genuine. In view of this, Government of India did not treat the findings as conclusive and did not bring back the ashes to India. The ashes have been lying in Japan since 1945. The Government of India provides an annual grant of maintenance of the temple"

iv) File No. 25/4/NGO/Vol-2(LW-KW]

The first Secretary, Indian Embassy Tokyo, T.N. Kaul in his note dated 28/7/1955 stated interalia,

"My impression is that while Government of India has accepted the fact of Netaji's death, we haven't necessarily accepted that the ashes in the Renkoji Temple are his ashes"

In the same letter said Shri T.N. Kaul raised an interesting question:-

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- 14 -

*"While we accept Netaji's Death, do we accept these
ashes as the real ones"*

v) File No.25/4/NGO/Vol-2(LW-KW):

Shri A.K. Damadaran, DIR of Finance, Government of India in
his note dated 15/12/1966 stated :-

*"Without in any way committing ourselves to the identity
of the ashes, we could recompense the priest and the
temple by some annunal Grant which wouldn't be for the
custody of ashes but as a reward for their non-Standing
loyalty to India"*

Shri Damadaran in his said note further stated that:-

*" Even if it finally transpires that the ashes
aren't genuine, still this amount would in no-way be an
excessive compensation"*

vi) File No. 25/4/NGO/Vol-2(LW-KW)

An official note dated 16/12/1966 issued under the signature of Shri V. Doraiswami, Director (Finance), Government of India stated that: -

"But the ashes having not been pronounced genuine, one has to find justification for incurring the expenditure on their safe retention abroad...In any case if the purpose of the expenditure is not to be disclosed, which, I presume is the intention it can be made only from discretionary grants of this Ministry."

vii) File No. 25/4/NGO/Vol-2(LW-KW):

An official note dated 06/12/1973 issued by Shri P.K. Budhwar, Deputy Secretary, Ministry of External Affairs (East

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- 16 -

Asia Division) stated referring to Muchizuki's statement that he was a stranger to the Late Netaji and people who brought the ashes was stranger to him: -

" A remark of this nature could throw doubt on the authenticity of these ashes & it is, therefore, for consideration whether we should continue making such payments in respect of an item whose authenticity would also appear to be in some doubt."

Viii) File No. G-12(3)/98-NGO

The above top secret file contents are top secret internal note on the subject "Return of Netaji 's ashes to India" under the signature of P.P. Shukla, Joint Secretary (P) dated 1st April, 1998 interalia to the effect that;

" The matter was discussed again in the Cabinet on 8 February 1995 and it was decided that the ashes would not

be brought back to India for the present but that the dependability of the arrangements in Japan should be examined. This was done and it was felt that we could raise our annual upkeep contribution from Y 600,000 to Y 1 million"

9. Applicants assert that the above-mentioned secret documents are maintained in secret files of the government of India and those files were produced before the Hon'ble Justice Mukherjee Commission of Inquiry. The applicants have gone through the contents of those files and taken note of.

10. The applicants state that the Official notes contained in those secret files reveals that the ashes kept in the Renkoji Temple are not genuine and the Government of India incurring huge fund from public Exchequer for an oblique purpose to mislead the people of the country, which is malafide, unfair and illegal, as

such, the Government of India should be prevented from incurring such expenditure from the public Exchequer.

11. The applicants submit that they have researched on the subject matter and collected above-mentioned information among many other which will enable this Hon'ble Court effectually and completely to adjudicate upon and settle all the questions involved in the writ application, as such, the applicants are necessary party to be added to the writ petition.

12. The applicants submit that they are very much interested in this subject matter involved in the writ petition being No. 27541 (W) of 2006 and intend to place all the relevant documents in connection with the subject matter involved in the said writ petition.

13. Unless the applicants are added as party to the writ petition being No. 27541(W) of 2006, the cause and purpose of the writ petition shall be prejudicially affected.

14. The instant application is made bonafide and for the interest of the justice.

Under the facts and circumstances stated above your applicants most humbly pray that your Lordships may graciously be pleased to allow this application for addition of parties by directing the petitioners to add the applicants as party

performa respondents in the writ

petition being W.P. No. 27541(W)

of 2006;

And such other or further order or

orders as to your Lordships may

seem fit and proper for the ends of

justice.

AFFIDAVIT

I surajit Dasgupta, son of Late Jatindra Mohan Dasgupta, aged about 51 years by occupation business, resident of 25/1, Guruprasad Chowdhury Lane, P.S. Amherst Street, Kolkata-700 006 do hereby solemnly affirm and say as follows;

1. That I am the petitioner no.1 and am well acquainted with the facts and circumstances of the case and also I have been duly authorized by the other petitioners to affirm this affidavit on their behalf, as such, I am competent to affirm this affidavit.
2. The statement made in paragraphs 1,2,3,4,5,6,7,8,9 and 10 are true to my knowledge based on the information derived from the records which I verily believe to be true and those made in paragraphs 11,12,13 and 14 are my humble submissions before this Hon'ble court.

Prepared in my office

Sl

Advocate

Sl
Deponent is known and

identified by me

Sl

Advocate

Solemnly affirmed before me

On this 11th day of March, 2008

COMMISSIONER

228-
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Appellate Side

W.P. No 27541, of 2006

CAN 2133 of 2008

In the matter of:

An application under Article 226 of the
Constitution of India:

And

In the matter of:

An application for addition of parties

And

In the matter of:

Shri Ashim Kumar Ganguly & Ors

.....Petitioners

Versus

Union of India & Ors

.....Respondents

And

In the matter of

Shri Surajit Dasgupta and Ors

Applicants

APPLICATION

Miss Debjani Ghosal Advocate
Bar Association Room No.2
High Court, Calcutta
Room No. 20B,
10 Old Post Office Street,

22/2007

Court Case
Most Immediate
By Special Messenger

No.12014/2007-Cdn.
Government of India
Ministry of Home Affairs

.....

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt.19.8.08

To

- P.B. 2A/08
- P.B. 10/08
- P.B. 11/08
1. The Joint Secretary (CNV),
Ministry of External Affairs
South Block, New Delhi.
 2. The Secretary,
Ministry of Defence,
South Block, New Delhi.
 3. Secretary to PM,
PMO, South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in Writ Petition No.2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

Sir,

I am directed to enclose herewith a copy of the further affidavit filed by the Ld. Advocate Miss Debjani Ghosal in the above mentioned case, for comments on the paragraphs which concern your Ministry/Office.

2. As the Hon'ble Court has already taken adverse notice of delay in filing reply against the Main Writ Petition, it is requested that comments of your Ministry/Office may please be forwarded ON MOST URGENT BASIS.

Yours faithfully,

Amar Chandra

(AMAR CHAND)

UNDER SECRETARY TO THE GOVT. OF INDIA.

Tel : 24610466

10003 JS (15) 25
4/9/08

Out today / At once

4846/Dir Cdg 18

PRIME MINISTER'S OFFICE

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 - Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors

Reference is invited to this office's ID of even number dated 29.8.08 on the subject. At the meeting taken on 1.9.08 in this office by the Secretary to PM, after discussion with the Law Secretary, Parliamentary Affairs Secretary, Joint Secretary (Internal Security) in the Ministry of Home Affairs and Joint Secretary (CNV) in the Ministry of External Affairs, it was agreed that the Home Ministry would act as the nodal Ministry for PMO as well as the other Ministries impleaded as respondents and file affidavits on behalf of all. The Government Counsel may also be advised accordingly to correspond with the Home Ministry only regarding the matter. The Home Ministry would make a reference to the Law Ministry for obtaining the advice of the Attorney General of India regarding the case and for securing the services of a more senior counsel for representing the Government in the case.

2. The Ministry of Home Affairs is requested to take immediate necessary follow up action.

(Amit Agrawal)
Director
Tel : 23012613

Ministry of Home Affairs [Attn: Joint Secretary (Internal Security)]

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 4.9.08

Copy to:

1. Secretary, Department of Legal Affairs
2. Secretary, Ministry of Parliamentary Affairs
3. Joint Secretary (CNV), Ministry of External Affairs

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No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S-II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 7th July, 2009.

7 JUN 2009
7 JUL 2009

To,

By Speed Post

Shri Tarun Kumar Ghosh,
Advocate,
10-A, Dr. Kartick Bose Street,
1st Floor,
Kolkata-700 009.

**Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.**

Sir,

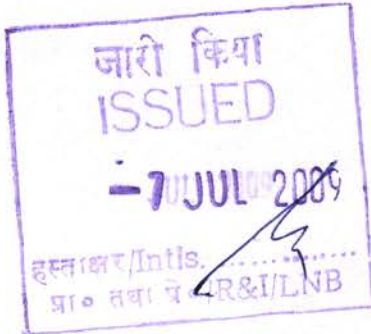
The undersigned is directed to refer to the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Government of India
Tele No. 246 10466



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21 JUL 2009

ISSUED

21 JUL 2009

To,

By Speed Post

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S-II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 21st July , 2009.

Shri Tarun Kumar Ghosh,
Advocate,
10-A, Dr. Kartick Bose Street,
1st Floor,
Kolkata-700 009.

21 JUL 2009

**Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.**

Sir,

The undersigned is directed to refer to thing Ministry's letter of even number dated 7th July, 2009 on the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Government of India
Tele No. 246 10466

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No. 12014 / 12 / 07 - Cdn
Government of India
Ministry of Home Affairs
I S-II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 7th July, 2009.

29 JUL 2009

7 JUL 2009

7 JUN 2009

By Speed Post

To,

Shri Tarun Kumar Ghosh,
Advocate,
10-A, Dr. Kartick Bose Street,
1st Floor,
Kolkata-700 009.

Bar Association,
Room No. 2,
High Court, Kolkata.

Subject: W.P. No. 27541 (W) of 06 Shri Ashim, Ganguly & Anr Vs
UOI and Ors.

Sir,

The undersigned is directed to refer to the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Government of India
Tele No. 246 10466



246
SPD 226 POST
By/Hand/Speed Post.

MOL. F. No. 909/Home/09M | 1756/3417
(IN ALL CORRESPONDENCE THE FILE NO.
AND CAUSE TITLE MAY CLEARLY BE GIVEN)

Tele: 22484806
FAX : 22311646

MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT, KOLKATA

11, Strand Road,
Kolkata- 1.

Date: 31-7-09

To ✓ Mr S.K. Malhotra
Dy Secy (Legal)
Min of Home Affairs
Lok Nayak Bhawan
Khan Market
N-D-110003

Sub:

CAN. 2133 of 2009
WP. 27541 of 06
Sri Ashim Ganguly.

Sir/Madam,

Please note that Sri/Smt. Tarun B. Ghosh
(Bar Assn. Room No. High Court, Calcutta Telephone No. 9433 506066
has been engaged in the aforesaid matter as Advocate on Record
with Sri/Smt. R.N. Das, Spl Counsel (Bar Assn. Room No.
High Court, Calcutta Telephone No. 9830268681 as his/her Sr.

You are requested to depute one conversant officer with
all relevant documents of the case and furnish parawise comments
brief history and necessary instruction etc. for drawing Affidavit in
Opposition /Reply/Application/Appeal etc to contact this Ministry and
Counsel engaged to do the needful and keep this office posted with
the current development of the case from time to time.

Incidental costs may be paid to the Advocate on Record for
filing vakalatnama and Affidavit in Opposition etc.

Duly signed vakalatnama by the concerned department of UOI
may be furnished immediately after receipt of this letter.

Department concerned is request to return the petition/
application as enclosed after making xerox.

us(f)
5/7/8
Pl put it immediately
7/10
DO (Cdr)

Yours faithfully,

(S. S. Mukherjee)

Jr. Central Govt., Advocate.

Enclo : AS above.

For:

1. CAN No. 2133 of 09
2. Letter dtd 21-7-09
3. Letter dtd 14-7-08

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

247
Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3199

Fax No. (033) 2248-2313

E-mail : barasohc@calcutta.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

:: 2 ::

The 14th July, 2008

In view of the matter, I am of the view that opposition is necessary to be filed on or before the next date of hearing against the contents of application for addition of parties file by the Ld. Advocate Miss Debjani Ghosal.

I am enclosing herewith a copy of application for addition of parties being CAN No. 2133 of 2008 for your consideration.

This is for your record and doing the needful.

Thanking You.

Encl: As stated above.

Yours faithfully,

Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)

Advocate.

14. 07. 2008

248
Tarun Kumar Ghosh

Advocate,
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : tarungho@calcutta.net.in

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Chamber : 2350-9128 & 2351-0080

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber

10-A, Dr. Kartick Bose Street

1st floor, Kolkata - 700 009

Visiting Hours : 6 p.m. to 9 p.m.

By Hand

Through Special Messenger

The 14th July, 2008.

To

The Additional Government Counsel,

Ministry of Law & Justice.

Department of Legal Affairs, Branch Secretariat,

11 Strand Road, Kolkata - 700 001.

Your Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.

to Mr. Malhotra, Dept. of Legal Affairs, Br. Sect. Kolkata
to take necessary steps
immediately
14/7/08
(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Sir,

Urgent
Sam Bose Plc
pp file
14/7/08
Kindly refer to my letter dated 18th March, 2008 addressed to Mr. S. K. Malhotra, Deputy Secretary to the Govt. of India, Ministry of Home Affairs, 18 Division, Cdn Section, 9th floor, Room No. 2, Lok Nayak Bhawan, Khan Market, New Delhi - 110003 and a copy of the said letter forwarded to the Additional Government Counsel, Ministry of Law & Justice, Department of Legal Affairs, Branch Secretariat, 11, Strand Road, Kolkata - 700 001 about affidavit-in-opposition to this case.

However, the matter was listed in the daily supplementary list dated 11th July, 2008 of Their Lordships The Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Pinaki Chandra Ghose under the head "Hearing" and placed for hearing before Their Lordships on 11.07.2008 itself.

I myself along with Ld. Sr. Counsel Mr. R. N. Das appeared on your behalf at the time of its call and filed affidavit-in-opposition dated 05th March, 2008. The matter was heard and after hearing the Ld. Advocates for the respective parties an application for addition of parties filed by the Ld. Advocate Miss Debjani Ghosal allowed. Their Lordships directed that the matter will be placed for further hearing after 2(two) weeks.

Contd.....P 2.

249
Jarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
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High Court, Calcutta
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222
10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

By Hand
Through Special Messenger

The 21st July, 2009

To
The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

Your Ref. File No: 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III dt. 30.07.2007

Re : W.P. No: 27541 (W) of 2006
Sri Ashim Ganguly & Anr. Petitioners.
- Vs -
Union of India & Ors. Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

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Dear Sir,

Kindly refer to my letter dated 14th July, 2009 which will
speak for itself.

In view of the matter, I would like to place on your record
that opposition is necessary to be filed against the contents of
application being CAN No: 2133 of 2008 filed by the Ld. Advocate Miss.
Debjani Ghosal.

Further, I would like to place it on your record that the
matter was listed in the peremptory list of cases dated 03rd July, 2009
and 10th July, 2009 of their Lordships The Hon'ble Mr. Surinder Singh
Nijjar, Chief Justice and the Hon'ble Justice Biswanath Samadder instead
of Supplementary list of cases.

Contd.....P/2

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Tarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
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1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

:: 2 ::

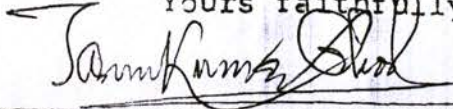
The 21st July, 2009.

The matter was taken up for hearing on 03rd July and 10th July 2009. At the time of its hearing, I myself led by the Ld. Senior Counsel Mr. R.N. Das. appeared on your behalf. The matter was heard. After hearing the Ld. Advocates for the parties, their Lordships directed to be placed the matter again on 20th August 2009 for further hearing.

This is for your record and doing the needful.

Thanking you.

Yours faithfully,


(TARUN KUMAR GHOSH)
Advocate.

21.07.2009

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DISTRICT-HOWRAH ^{KOLKATA}

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

CAN NO. 2133 OF 2008

W.P. NO. 27541 (W) OF 2006

IN THE MATTER OF

1 An application for addition of parties

IN THE MATTER OF

Sri Ashim Kumar Ganguly & Anr

.....PETITIONERS

Verus

The Union of Ind

.....RESPONDENTS

IN THE MATTER OF

1. Sri Surajit Dasgupta, son of Late

Jatindra Mohan Dasgupta, by

occupation business, resident of

25/1, Guruprasad Chowdhury Lane,

P.S. Amherst Street, Kolkata-700 006

2. Shri Keshav Bhattacharjee, Advocate

son of *Late Basudev Bhattacharjee*

Bhattacharjee, Bar Association, Room

No. 4, High Court Calcutta;

3. Sri Nandalal Chakraborty, by

occupation, Head of the Department

of Political Science, Presidency

College, resident of 559/1, Dakshin

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Dari Road, P.S. lake Town, Kolkata-

700 048

4. Dr. Madhusudan Pal, by occupation

Assistant Professor, Calcutta Medical

College Hospital, resident of A/5/2,

Sharabani Abashan, Salt Lake, Sec-

III, Kolkata-700 009.

5. Sri Tarun Kumar Mukherjee son of

Late Gobindalal Mukherjee, resident

of 2/1, Brindaban Mullick 1st Lane,

P.S.- Amherst Street, Kolkata- 700

009.

6. Sri Jagatjit Dasgupta son of Late

Jatindra Mohan Dasgupta, resident of

14 284

25/1 Guruprosad Chowdhury Lane,
P.S.- Amherst Street, Kolkata-700
006.

7. Sri Kusal Sankar Chowdhury son of
Chowdhury, resident of 32 B, Justice
Manmatha Mukherjee Row, P.S. -
Amherst Street, Kolkata-700 009.

8. Shri Siddheshwar Bhattacharjee,
resident of Hatepara " Matri Bhavan",
P.O. Krishnnagar, Pin Code- 741 104,
District- Nadia

9. Shri Sunil Krishna Gupta, resident of
38, Vicar Street, P.S. - Amherst
Street, Kolkata- 700 009

.....APPLICANTS

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5

To the Hon'ble Surrinder Singh Nijjar, the Chief Justice and his

Companion of Justices of the said Hon'ble Court

The humble petition of the above-name^d

Petitioners

Most Respectfully Sheweth

1. The Applicants are citizen of India and a part of the public of India.

The Applicants on several occasions have also espoused cause of the people in representative capacity on the subject "Netaji Subhas Chandra Bose", as described herein below. The people at large from all corner of the country including West Bengal have encouraged and requested the applicants to espouse the cause on the subject "Netaji Subhas Chandra Bose" to prevent mischievous role played by the respondent/Government of India and others in unleashing misformation about Netaji Subhas Chandra Bose, as such the Applicants are moving the instant application for addition of parties.

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2. The Applicants ~~have~~ voluntarily have voluntarily engaged themselves in research work on Netaji Subhas Chandra Bose for more than last 25 years at their cost and sacrifice. The applicants moved before the Hon'ble Supreme Court of India, under Article 32 of the Constitution of India, challenging the conferment of the "Posthumous Bharat Ratna" award to Netaji Subhas Chandra Bose. The Division Bench consisting of the Hon'ble Justice Sujata. V. Monohar and the Hon'ble Justice G.B. Pattanaik upon hearing at length cancelled the said "posthumous" award.

The applicants also filed a Writ Petition, as a Public Interest Litigation through one of their associate before the Hon'ble Calcutta High Court, being W.P. No. 281 of 1998 praying inter alia for direction to set up a Commission of Inquiry to give a clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Hon'ble Division Bench consisting of the Hon'ble Chief Justice Prabha Sankar Mishra (as his Lordship then was) and the Hon'ble Justice Bhaskar

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Bhattacharyya directed the Government of India to set up an Inquiry Commission to give clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Government of India was compelled to set up such Inquiry Commission by appointing a retired judge of the Hon'ble Supreme Court of India Sri Manoj Kumar Mukherjee as Chairman of the Commission

3. The applicants moved before the Justice Mukherjee Commission of Inquiry on the mysterious disappearance of Netaji Subhas Chandra Bose and have submitted volume of documents, which have been obtained from National Archives as well as from foreign countries which are authentic and genuine and the commission has also relied upon the statement and the documents filed by the applicants, with much appreciation which were admitted by the Government of India.

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4. That the applicants are working with an object inter alia to preach, promote and propagate the great humanistic ideals, thoughts and sacrifice of Netaji Subhas Chandra Bose in the making of modern India among the people at large and also to eradicate misinformation campaign for distortion of history.

5. The applicants have sufficient interest in the subject matter, as they have carried out extensive research work on the subject matter of mysterious disappearance of Netaji Subhas Chandra Bose and came across several important secret documents which could unfold the mystery of Netaji's disappearance.

6. The only misleading document to establish the alleged death of Netaji Subhas Chandra Bose is Death certificate and cremation permit in Japanese language which on translation appears to be a death certificate of one Ichiro Okuro

7. The Government of India till date never disclosed their stand that it has any record to establish that Netaji Subhas Chandra Bose died in the alleged aircrash on August 18, 1945 and the ashes kept in the Renkoji Temple are that of Netaji Subhas Chandra Bose. On the contrary, Learned Senior Counsel of the Government of India made an unambiguous submission before the Division bench of this Hon'ble court to the effect that;

" the Government of India has been maintained and is maintaining even now that a further /fresh enquiry /prove is required and the information that, Netaji died in the plane crash on August 18, 1945 is full of loopholes ,contradictions and therefore inconclusive "

The above mentioned submissions of the Learned senior Counsel
for the Government of India has been reported in AIR 1999
Calcutta-9

8. The documents and records in category marked as top secret
records maintained by the Government of India reveals as follows:-

i) File No. 23(ii)/56-57 PM

A secret note of Shri M.O Mathai dated 2/12/1954
communicating to the Joint Secretary (AD), Government of
India to the effect that ;

PMO

"A small amount of Rs. 200/- and odd was received by
the Minister of External Affairs from our Embassy in
Tokyo along with the ashes and other remains of the
Late Shri Subhas Chandra Bose".

It is crystal clear that the ashes initially kept in the Renkoji Temple has been taken back to India, possibly the genuineness genuiness of the ashes was doubtful. The ashes now kept in the Renkoji Temple are not the alleged ashes of Netaji Subhas Chandra Bose.

ii) Parliament proceeding Records

The then Prime Minister Shri Moraji Desai on 28th August, 1978 on the floor of the Parliament declared that;

" there have been two enquires into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a committee presided over by Major-General Shah Nawaz Khan and the second by a one-man Commission of Inquiry headed by Shri C.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee

and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed, some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive

iii) File No. 800/6/C/1/90-Pol

A note of Meera Shankar, the Director of Prime Minister's Office dated 23rd August 1990, on the proposal of Mr. Shanti Lal Patel a member of Parliament for bringing back the alleged ashes from Japan to India states inter alia that:-

pmo

Minister Shri S.C. Bose again wrote to Prime Minister Smt. Indira Gandhi saying that there was no convincing

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proof that the so called ashes were genuine. In view of this, Government of India did not treat the findings as conclusive and did not bring back the ashes to India. The ashes have been lying in Japan since 1945. The Government of India provides "an annual grant of maintenance of the temple"

iv) File No. 25/4/NGO/Vol-2(LW-KW)

The first Secretary, Indian Embassy Tokyo, T.N. Kaul in his note dated 28/7/1955 stated inter alia,

"My impression is that while Government of India has accepted the fact of Netaji's death, we haven't necessarily accepted that the ashes in the Renkoji Temple are his ashes"

In the same letter said Shri T.N. Kaul raised an interesting question:-

vno.

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- 14 -

"While we accept Netaji's Death, do we accept these
ashes as the real ones"

v) File No. 25/4/NGO/Vol-2(LW-KW):

Shri A.K. Damadaran, DIR of Finance, Government of India in
his note dated 15/12/1966 stated :-

"Without in any way committing ourselves to the identity
of the ashes, we could recompense the priest and the
temple by some annual Grant which wouldn't be for the
custody of ashes but as a reward for their non-standing
loyalty to India"

Shri Damadaran in his said note further stated that:-

" Even if it finally transpires that the ashes
aren't genuine, still this amount would in no-way be an
excessive compensation"

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vi) File No. 25/4/NGO/Vol-2(LW-KW)

An official note dated 16/12/1966 issued under the signature of Shri V. Doraiswami, Director (Finance), Government of India stated that:-

"But the ashes having not been pronounced genuine, one has to find justification for incurring the expenditure on their safe retention abroad...In any case if the purpose of the expenditure is not to be disclosed, which, I presume is the intention it can be made only from discretionary grants of this Ministry."

vii) File No. 25/4/NGO/Vol-2(LW-KW):

An official note dated 06/12/1973 issued by Shri P.K. Budhwar, Deputy Secretary, Ministry of External Affairs (East

Wro

Asia Division) stated referring to Muchizuki's statement that he was a stranger to the late Netaji and people who brought the ashes was stranger to him: -

" A remark of this nature could throw doubt on the authenticity of these ashes & it is, therefore, for consideration whether we should continue making such payments in respect of an item whose authenticity would also appear to be in some doubt."

Viii) File No. G 12(3)/98-NGO

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The above top secret file contents are top secret internal note on the subject "Return of Netaji's ashes to India" under the signature of P.P. Shukla, Joint Secretary (P) dated 1st April, 1998 interalia to the effect that;

"The matter was discussed again in the Cabinet on 8 February 1995 and it was decided that the ashes would not

be brought back to India for the present but that the dependability of the arrangements in Japan should be examined. This was done and it was felt that we could raise our annual upkeep contribution from Y 600,000 to Y 1 million"

9. Applicants assert that the above-mentioned secret documents are maintained in secret files of the government of India and those files were produced before the Hon'ble Justice Mukherjee Commission of Inquiry. The applicants have gone through the contents of those files and taken note of.

10. The applicants state that the Official notes contained in those secret files reveals that the ashes kept in the Renkoji Temple are not genuine and the Government of India incurring huge fund from public Exchequer for an oblique purpose to mislead the people of the country, which is mala fide, unfair and illegal, as

such, the Government of India should be prevented from incurring such expenditure from the public Exchequer.

11. The applicants submit that they have researched on the subject matter and collected above-mentioned information among many other, which will enable this Hon'ble Court effectually and completely to adjudicate upon and settle all the questions involved in the writ application, as such, the applicants are necessary party to be added to the writ petition.

12. The applicants submit that they are very much interested in this subject matter involved in the writ petition being No. 27541 (W) of 2006 and intend to place all the relevant documents in connection with the subject matter involved in the said writ petition.

13. Unless the applicants are added as party to the writ petition being No. 27541(W) of 2006, the cause and purpose of the writ petition shall be prejudicially affected.

14. The instant application is made bonafide and for the interest of the justice.

Under the facts and circumstances stated above your applicants most humbly pray that your Lordships may graciously be pleased to allow this application for addition of parties by directing the petitioners to add the applicants as party

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performa respondents in the writ

petition being W.P. No. 27541(W)

of 2006;

And such other or further order or

orders as to your Lordships may

seem fit and proper for the ends of

justice.

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- 21 -

AFFIDAVIT

I surajit Dasgupta, son of Late Jatindra Mohan Dasgupta, aged about 51 years by occupation business, resident of 25/1, Guruprasad Chowdhury Lane, P.S. Amherst Street, Kolkata-700 006 do hereby solemnly affirm and say as follows;

1. That I am the petitioner no.1 and am well acquainted with the facts and circumstances of the case and also I have been duly authorized by the other petitioners to affirm this affidavit on their behalf, as such, I am competent to affirm this affidavit.
2. The statement made in paragraphs 1,2,3,4,5,6,7,8,9 and 10 are true to my knowledge based on the information derived from the records which I verily believe to be true and those made in paragraphs 11,12,13 and 14 are my humble submissions before this Hon'ble court.

Prepared in my office

SA
Advocate

SA
Deponent is known and

identified by me

SA
Advocate

Solemnly affirmed before me

On this 11th day of March, 2008

COMMISSIONER

260- 292 252

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Appellate Side

W.P. No 27541, of 2006

CAN 2133 of 2008

In the matter of:

An application under Article 226 of the
Constitution of India:

And

In the matter of:

A application for addition of parties

And

In the matter of:

Shri Ashim Kumar Ganguly & Ors

.....Petitioners

Versus

Union of India & Ors

.....Respondents

And

In the matter of:

Shri Surajit Dasgupta and Ors

Applicants

APPLICATION

Miss Debjani Ghosal Advocate

Bar Association Room No.2

High Court, Calcutta

Room No. 20B,

10 Old Post Office Street,

273

261
253

**NO.12014/12/2007-Cdn
Government of India
Ministry of Home Affairs
I S – II Division : Cdn Section**

**9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3.**

Dated, the 19th Aug 2009.

To,

**Shri S.S. Makkar,
Jr. Central Govt. Advocate
11, Strand Road,
Kolkata-1.**

Subject : CAN : 2133 of 2009 – WP 27541 (W) of 6 – Shri Ashim Ganguly.

Sir,

I am directed to refer to your letter No. 909/Home/09th/1756/3417 dated 31.7.2009 on the above-mentioned subject and to enclose herewith a copy of the Rajya Sabha Sectt OM No. RS.40/2008-T dated 21st Aug, 2008 and Lok Sabha Sectt OM No. 23/5/XIV/2008/T dated 4th Aug, 2008 indicating the status of the laying of the report of the Justice Mukherjee Commission of Inquiry into the alleged disappearance of Netaji Subhash Chandra Bose on the Table of the Houses on 17th May, 2006.

2. The matter was also discussed with Shri R N Das, Special Counsel, who desired above information.
3. Ministry of home Affairs may kindly be kept informed about the progress made in the case from time to time.

Yours faithfully,



(S K Malhotra)

Deputy Secretary to the Govt. of India

Telefax : 011 – 2469 7124

Copy to : Shri R N Das, Special Counsel, High Court of Kolkata, Kolkata, West Bengal.

(through Sh. S S Makkar)

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LOK SABHA SECRETARIAT

Telegrams : LOKSABHA, NEW DELHI
FAX : 23010756

PARLIAMENT HOUSE ANNEXE
NEW DELHI-110001

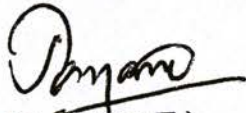
F No. 23/5/XIV/2008/T

Dated: 4th August, 2008

OFFICE MEMORANDUM

Subject: WP No. 2003/2006-Shri Rudra Jyoti Bhattacharya-Vs.-Union of India & Ors.

The undersigned is directed to refer to the Ministry of Home Affairs (IS Division) OM No. 12014/5/07-Cdn(Pt). Dated 31st July, 2008 on the above subject and to state that no decision regarding accepting or rejecting the ATR on the Report of the Justice Mukherjee Commission of Inquiry relating to the disappearance of Subhash Chandra Bose has been taken by Lok Sabha till date.


(Jaya Kumar T.)
Deputy Secretary-II
Ph. No. 23034795

To

The Ministry of Home Affairs,
(IS Div: Cdn Section)
(Shri Amar Chand, Under Secretary)
New Delhi.

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PARLIAMENT OF INDIA
RAJYA SABHA SECRETARIAT

Telegram: "PARISHAD"
Tel.: 23035445/23034581
Telefax: 23011328
E-mail: rstable@sansad.nic.in

PARLIAMENT HOUSE
NEW DELHI

No.RS.40/2008-T

21st August, 2008

OFFICE MEMORANDUM

Subject: - WP No. 2003/2006 – Shri Rudra Jyoti Bjattajarya –
Vs. – Union of India & Ors.

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No. 12014/5/07-Cdn (Pt). dated the 18th August, 2008 on the subject cited above and to state that the Report of the Justice Mukherjee Commission of Inquiry into the alleged disappearance of Netaji Subhas Chandra Bose along with the Action Taken Report was laid on the Table of the Rajya Sabha on the 17th May, 2006. Since there was no Motion before the House to accept or reject the said ATR, the Secretariat has no comments to offer in the matter.

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sol (Cdn)


(K. SUDHAKARAN)
Deputy Director

To,

Ministry of Home Affairs
(Shri Amar Chand, Under Secretary),
IS Division: Cdn Section,
9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi

2/8

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Melkan 22311646

Das

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26/2/08

**No.I/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section**

**9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 19th August, 2009.**

To

1. The Joint Secretary (CNV), *P.B 12/09*
Ministry of External Affairs,
South Block, New Delhi.

2. The Secretary,
Ministry of Defence, *P.B 11/08*
South Block, New Delhi.

3. Secretary to PM
PMO, South Block, *P.B 10/08*
New Delhi.

**Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 – Shri
Ashim Kumar Ganguly & ors versus Union of India & Ors.**

Sir,

I am directed to refer to this Ministry's letter of even number dated 19.8.2008 on the above mentioned subject and to enclose a copy of an application for addition of parties in the case. It is requested that para-wise comments may kindly be sent to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

q/c Yours faithfully,

Amar Chand

(Amar Chand)

**Under Secretary to the Govt. of India
Tel: 24610466**

298

Out today / At once

PRIME MINISTER'S OFFICE

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541 (W) of 2006 - Shri Ashim Kumar Ganguly & ors versus Union of India & Ors.

Reference is invited to MHA letter no. I/12014/12/2007-Cdn. dated 19.8.09 on the subject. In this connection, attention is invited to PMO ID note of even number dated 4.9.08, conveying the agreement arrived at the meeting convened by the then Secretary to PM on 1.9.08 with Secretaries / representatives from the Department of Legal Affairs, Ministry of Parliamentary Affairs, Ministry of Home Affairs and Ministry of External Affairs that the Home Ministry will act as the nodal Ministry for this office as well as the other Ministries impleaded as respondents and will file affidavits on behalf of all.

2. Against this background, the undersigned is directed to request that the Ministry may kindly take appropriate action for filing appropriate affidavit on behalf of all respondents, as decided at the aforementioned meeting, in consultation with any other Ministries / Departments concerned. In case clarification / comments regarding any particular aspect relating to this office is felt necessary, Home Ministry could specifically identify and refer the same to this office.

Relates to
DS (Legal) /
JS (U-11)
1/9/09

(Amit Agrawal)
Director
Tel.: 2301 2613

Ministry of Home Affairs
[Attn: Joint Secretary (Internal Security)]
PMO ID no. 915/11/C/2/2006-Pol

Dated 1.9.09

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**No.1/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section**

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 2nd September, 2009.

To

P.B. 1/05
of NCB
MK
7/9/09

**Shri Amit Aggarwal,
Director,
PMO, South Block,
New Delhi.**

**Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 –
Shri Ashim Kumar Ganguly & ors versus Union of
India & Ors.**

Sir,

I am directed to refer to PMO ID No. 915/11/c/2/2006-Pol dated 1.9.2009 on the above mentioned subject and to say that File No 23(ii) 56-57 PM and File No. 800/6/c/1/90-Pol mentioned in the petition pertains to PM Office. The case is coming shortly. It is requested that para-wise comments may kindly be sent to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

Yours faithfully,



(Amar Chand)

**Under Secretary to the Govt. of India
Tel: 24610466**

280
267
259
Most Immediate

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of
2006- Shri Ashim Kumar Ganguly & ors versus
Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no.
I/12014/12/2007-Cdn. dated 2.9.09 on the above subject
requesting para-wise comments in respect of the above
mentioned court case.

2. The copy of the writ petition received in this office is
illegible. The section has telephonically requested thrice for the
legible copy of the petition. It is requested that a clear copy of
the petition may kindly be sent to this office urgently.



(Amit Agrawal)
Director
Tel: 2301 2613

Ministry of Home Affairs
[Attn.: Shri Amar Chand - Under Secretary]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1339741/PMO/2009-POL

Dated: 9.9.2009

pl sent immediately.
Amar
10/9/09

f.o (cds)

281
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No.I/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 10th September, 2009.

To

P.B. 5707
M
10/9
Shri Amit Aggarwal,
PMO, South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 – Shri
Ashim Kumar Ganguly & ors versus Union of India & Ors.

Sir,

I am directed to refer to PMO I.D.No.1339741/PMO/2009-POL dated 9.9.2009 on the above mentioned subject and to enclose a copy of relevant extracts from the Writ Petition. It is requested to send the comments to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Govt. of India

Tel: 24610466

R&I
Pl. issue
by Speed Post
ME
24/9/09

282 Speed Post

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269

No. 12014 / 12 / 07 - Cdn
Government of India
Ministry of Home Affairs
I S Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 24th September, 2008.

Shri G S Makker,
Junior C.G.A.,
Ministry of Law and Justice,
11, Strand Road,
Kolkata - 1.

24 SEP 2009

Subject: CAN -2133 of 2009 - W.P. No. 27541 (W) of 06 Shri
Ashim, Ganguly & Anr Vs UOI and Ors.

Sir,

The undersigned is directed to refer to your letter No.
909/Home/09III/1756/3417 dated 31st July, 2009 on the above subject
and to enclose herewith parawise comments in so far as contents of
application for addition of parties filed by the Ld. Advocate Miss Debjani
Ghosal is concerned for information and further necessary action

Yours faithfully,

Amar Chand

(Amar Chand)
Under Secretary to the Government of India
Tele No. 24610466

By Speed Post

Copy for kind information :-

- (1) Shri R N Das, Sr. Counsel, Kolkata.
- (2) Shri Traun Kumar Ghosh, Advocate, Room No. 2, High Court,
Kolkata.

जारी किया
ISSUED
24 SEP 2009
हस्ताक्षर/Intls.
प्रारं तथा प्रेषित/R&I/LNB

Parawise comments of Ministry of Home Affairs on CAN No. 2133 of 2008 and WP No.27541 of 2006 in the matter of 'an application for addition of parties' in the matter of Sri Ashim Kumar Ganguly & Anr (Petitioners) Vs the Union of India & others (respondents).

1. Averments made in para 1 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
2. Averments made in para 2 need no comments as these are matters of fact
3. Averments made in para 3 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
4. Averments made in para 4 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
5. Averments made in para 5 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
6. Averments made in para 6 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
- 7& 8. With regard to averments made in para 7, it is stated that :-

- (i) the disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the very beginning. The Government of India has, so far, appointed three Committee/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members,

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appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report. The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

- (ii) Subsequently, a writ petition was filed before the Kolkata High Court and a Division Bench by its judgement dated 30th April, 1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose. Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, retired Judge of the Supreme Court on 14th May, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose

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in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(iii) Justice Mukherjee Commission of Inquiry, (JMCI), submitted its report on 8th November, 2005 with the following findings:-

S. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so,	In the absence of any clinching evidence a positive

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	when and how;	answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

- (iv) The report of the JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of JMCI, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. The

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Government of India did not accept the conclusions of JMCI.

- (v) The report of the JMCI was placed before both the Houses of Parliament along with the ATR on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

This Report is placed before the Houses as required under sub-section 4 of Section 3 of the Commissions of Inquiry Act, 1952".

- (vi) it would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter

may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

9. Averments made in para 9 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.

10. With regard to the averments made in para 10, the answering respondent wants to reiterates what has been stated in para 7 above.

11. Averments made in para 11 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.

12. Averments made in para 12 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court

13. Averments made in para 13 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.

14. Averments made in para 14 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.

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Speed post
277/28
SPEED POST

2674/25(2)09
22/10
F. Nos. 1204, 592 & 909/Home/09-III. / 3016/4289

GOVERNMENT OF INDIA

Ministry of Law & Justice

Deptt. of Legal Affairs

11, Strand Road

Kolkata

Date: 15.10.2009

FAX No. 22311646

Tel. No. 22484806

To

Mr. S.K. Malhotra

Dy. Secretary (Legal)

Ministry of Home Affairs

Lok Nayak Bhawan

New Delhi - 110 003.

Sir,

Sub : 1 & 2. CAN No. 2133 of 09

W.P. No. 27541 (W) of 06

Sri Ashim Ganguly & Anr. - Vs - UOI & Ors.

3. W.P. No. 8215 (W) of 2008

Sri Subhas Chandra Bosu & Anr. - Vs - UOI & Ors.

Enclosed please find herewith ⁽²⁾ copy of letter dated 27.08.2009 received from our Panel Counsel Shri Tarun Kumar Ghosh, Advocate which speaks for itself.

Your requested to depute one conversant officer along with with brief history, parawise comments and necessary instruction to this office and meet our panel Counsel for further necessary action.

This is for your information and necessary action.

Encl : As above.

P1. put up

SD (EDN)

2/10

Yours Faithfully,

(G S Makker)

Jr. C.G.A.

290
278 269
Tarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cmc.net.in

10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

By Hand
Through Special Messenger.

Dated: 27th August, 09.

To
The Senior Govt. Counsel,
Ministry of Law & Justice,
Dept. of Legal Affairs,
11, Strand Road, Kolkata-700001.

Your Ref. File No: 1204/Home/06/IIIIdt; 21.12.2006 and
1204/Home/06/III dt. 30.07.2007 and
909/Home/09/III dt. 29.07.2009.

Re: W.P. No: 27541 (W) of 2006.
Sri Ashim Gunguly & Anr.

.....Petitioners.

- Vs -
Union of India & Ors.

.....Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta).

Attention : Mr. G.S. Makkar, Jr. Centran Govt. Advocate,
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 21st July, 2009 by which I brought to your notice about out come of ^{last} ~~st~~ hearing on 10th July, 2009.

In view of the matter, I would like to place it on your record that the matter was again listed in the premtory list of cases on 21st August, 2009 of Their Lordships the Hon'ble Justice Mr. Surinder Singh Nijjar, Chief Justiec and the ~~Hon'ble~~ Hon'ble Justice Biswanath Somadder and taken up for hearing. At the time of its hearing, I my-self led by the Ld. Senior Counsel Mr. R.N.D's appeared on your behalf. The matter was heard.

After hearing the Ld. Advocates for the respective parties Their Lordships were pleased to direct that the matter will be listed and placed for further hearing after ensuing Puja Vacation.

This is for your record.

Thanking You.

Yours faithfully, 08
Tarun Kumar Ghosh, 27/8/09
(TARUN KUMAR GHOSH) Ad,
Advocate

291

279 270

Tarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cmc.net.in

10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

By Hand
Through Special Messenger.
To
The Senior Govt. Counsel,
Ministry of Law & Justice,
Department of Legal Affairs,
Branch Secretariat, 11, Strand Road,
Kolkata - 700001.

Dated: 27th August, 2009.



Your ref. File No: 592/Home/08-III dt. 22-05-2008
29th

Re : W.P. No: 8215 (W) of 2008.
Subhas Chandra Bose
- Vs -
Union of India & Ors.

(The matter is pending in the Hon'ble High Court, Calcutta).

Dear Sir,

Kindly refer to my letter dated 21st July, 2009 by which I brought to your notice about outcome of last hearing on 10th July, 2009.

In view of the matter, I would like to place it on your record that the matter was again listed in the peremptory list of cases on 21st August, 2009 of Their Lordships the Hon'ble Justice Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Biswanath Somadder and taken up for hearing. At the time of its hearing, I myself led by the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf. The matter was heard.

After hearing the Ld. Advocates for the respective parties Their Lordships were pleased to direct that the matter will be listed and placed for further hearing after ensuing Puja Vacation.

Thanking You
This is for your record.

Thanking You.

Yours faithfully,

Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)
Advocate.
27.08.2009

292 1 240 271

Most Immediate

Court Case

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of 2006 - Shri Ashim Kumar Ganguly & ors versus Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no. I/12014/12/2007-Cdn. dated 2.9.09 on the above subject.

2. The undersigned is directed to forward the following files, in original, to ^{enable MHA to} draft an appropriate affidavit in the matter:

S. N	PMO File no.	Subject	Total pages
1.	800/6/C/1/1990-POL	Netaji Subhash Bose-bringing in the ashes of	note 1 to 6 and corrs. 1 to 35
2.	23(11)56-57-PM/NGO	I.N.A. Treasure	Page 1 to 67


(Amit Agrawal)
Director
Tel: 2301 2613

Ministry of Home Affairs
[Attn.: Shri Amar Chand - Under Secretary]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1339741/PMO/2009-POL

Dated: 15.9.2009

Encl.. 2 (two) files in original



S.K. Malhotra
Dy. Secretary (Legal)
Tel:011-24697124

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS
लोक नायक भवन, खान मार्केट
LOK NAYAK BHAVAN, KHAN MARKET
नई दिल्ली-110003
NEW DELHI-110003

No.12014/12/2007-Cdn

Dated, 13th Nov, 2009.

Sir,

Shri Amar Chand, Under Secretary (Legal) working in Ministry of Home Affairs has been deputed to Kolkata on official tour in connection with a court case on disappearance of Netaji Subhash Chandra Bose in Kolkata High Court. His tour programme is as under:-

Date	Flight No.	Departure	Arrival
15.11.09	IC-264 ECONOMY (LOWEST)	Delhi (5.00 PM)	Kolkata (6.55 PM)
17.11.09	IC-201 ECO (LOWEST)	Kolkata (5.00PM)	Delhi (7.20PM)

2. It would be highly appreciated if air ticket for the above journeys is booked and confirmed **in respect of Shri Amar Chand, Under Secretary (Legal)**. Air ticket may kindly be emailed / faxed at the following:-

Email id. Us-legal@nic.in
Fax No. 011-2461 9536
Tele No. 011-2461 0466
Mobile No. 0 - 9 555 1 66 88 1

3. Bill for the above said journey may be sent to Under Secretary (Ad.III), Ministry of Home Affairs, North Block, New Delhi

With regards,

Yours sincerely,

(S.K. Malhotra)

Balmer Lawrie & Co. Ltd,
[Kind attn : Domestic Counter]
Scope Complex, New Delhi - 3.
[Fax No. 011 - 2432 1525]

Copy for information and necessary action to : **Under Secretary (Ad.III), Ministry of Home Affairs, North Block, New Delhi.**

P.B.12/09

MC
13/11/09

294 1282 273
Most Immediate

Court Case

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of 2006 - Shri Ashim Kumar Ganguly & ors versus Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no. I/12014/12/2007-Cdn. dated 2.9.09 on the above subject.

2. The undersigned is directed to forward the following files, in original, to ^{enable MHA to} draft an appropriate affidavit in the matter:

S. N	PMO File no.	Subject	Total pages
1.	800/6/C/1/1990-POL	Netaji Subhash Bose-bringing in the ashes of	note 1 to 6 and corrs. 1 to 35
2.	23(11)56-57-PM/NGO	I.N.A. Treasure	Page 1 to 67


(Amit Agrawal)
Director
Tel: 2301 2613

Ministry of Home Affairs
[Attn.: Shri Amar Chand - Under Secretary]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1339741/PMO/2009-POL

Dated: 15.9.2009

Encl. - 2 (two) files in original

File is
under submission

298

283 274

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S- II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.


Dated, the 6th Nov, 2009.

OFFICE MEMORANDUM

**Subject: CAN -2133 of 2008 - W.P. No. 27541 (W) of 2006 Shri
Ashim Kumar Ganguly & Anr Vs UOI and Ors.**

The undersigned is directed to refer to PMO's ID Note No. 1339741 / PMO/2009-POL dated 15th Sept, 2009 and to return herewith the following files of PMO.

S.No.	PMO File No.	Subject	Total Pages.
1.	800/6/C/1/1990 – POL	Netaji Subhash Bose – bringing in the ashes of	Note 1 to 6 and Corrs 1 to 35.
2.	23 (11) 56 – 57 – PM/NGO	INA Treasure	Page 1 to 67.



(B K Rekhi)
Section Officer (Cdn)

PMO,
[Kind attn : Shri Amit Agarwal, Director,
Political Section, South Block,
New Delhi – 1.

issuance vide
P.B. 10/08
M
9/11/09

296 284 275

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of
2006- Shri Ashim Kumar Ganguly & ors versus
Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no.
12014/12/07-Cdn. dated 6.11.09 on the above subject.

2. The undersigned is directed to acknowledge that the file
no. 800/6/C/1/1990-POL and 23(11) 56-57-NGO has been
received.



(Rajesh Sharma)
Section Officer

Ministry of Home Affairs
[Attn.: Shri B. K. Rekhi- Section Officer]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1379267/PMO/2009-POL

Dated: 17.11.2009

297
SPEED POST

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3208/14839
F.No.592/Home/08-III.
Ministry of Law & Justice
Deptt. of Legal Affairs
11, Strand Road
Kolkata

Date:11.11.2009

FAX No.22311646
Tel. No.22484806

To
Shri Tarun Kumar Ghosh
Advocate
Bar Association, Room No.2
High Court, Calcutta.

Sub : W.P.No.8215(W) of 2008
Sri Subhash Chandra Basu & Anr.
-Vs-
Union of India & Ors.

Sir,

We have received letter dated 26.10.09 from the department concerned asking this office about the development in the aforesaid case. You are requested to inform the department concerned under intimation to this office about the present status of the case immediately.

Speed post
Yours faithfully,

(G.S.Makker)
Jr.Central Govt. Advocate

Copy to :

Smt. Baljeet Kaur Rekhi, Section Officer, Ministry of Home Affairs, IS-II Division, Cdn. Section, Lok Nayak Bhawan, 9th floor, 'C' Wing, Room No.8, New Delhi - for information.

24/11/09

11/11/09
(Jr. C.G.A.)

298 285 277
SPEED POST

F.No.909/Home/09 13206/4840
Ministry of Law & Justice
Deptt. of Legal Affairs
11, Strand Road
Kolkata

Date:11.11.2009

FAX No.22311646
Tel. No.22484806

To
Shri Tarun Kumar Ghosh
Advocate
Bar Association, Room No.2
High Court, Calcutta.

Sub : CAN No.2133 of 2009
W.P.No.27541(W) of 06
Sri Ashim Ganguly & Anr.
-Vs-
Union of India & Ors.

Sir,

Enclosed please find herewith copy of letter dated 24.09.09 alongwith parawise comments on CAN No.2133 of 09 in the aforesaid matter for your kind information and necessary action.

You are requested to inform the department concerned under intimation to this office about present status of the case immediately. You may contact Mr. Amar Chand, Under Secretary Tel. No.011-24610466 and 09555166881 for any assistance in the aforesaid matter and to do the needful.

This is for your information and necessary action.

Encl: As above.

Yours faithfully,

(G.S.Makker)
Jr. Central Govt. advocate

Copy to :

1.Shri R.N. Das, Sr. Advocate, High Court, Calcutta.

2.Shri Amar Chand, Under Secretary to the Govt. of India, Ministry of Home Affairs, IS Division, Cdn Section, 9th floor, Lok Nayak Bhawan, Khan Market, New Delhi.

(Jr. C.G.A.)

24/11

SO (Cdn)

ms n k
B. R. Chakraborty
24/11/09

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SPEED POST
286 278

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19/2

F.No. 909/Home/09-III. /308 / 235
GOVERNMENT OF INDIA
Ministry of Law & Justice
Deptt. of Legal Affairs
11, Strand Road
Kolkata

Date: 03.02.2010

FAX No.22311646
Tel. No.22484806

To
Mr. S.K. Malhotra
Dy. Secretary(Legal)
Ministry of Home Affairs
Lok Nayak Bhawan
New Delhi - 100 003

G.S. Mahon

Sub : CAN No. 2133 of 2009
W.P.No.27541(W) of 06
Sri Ashim Ganguly & Anr.
-Vs -
Union of India & Ors.

Sir,

Enclosed please find herewith a copy of letter dated 22.01.2010 received from our Panel Counsel Shri Tarun Kumar Ghosh, Advocate which speaks for itself.

You are requested to depute one conversant officer along with brief history, parawise comments and necessary instruction to this office and meet our panel Counsel for further necessary action.

This is for your information and necessary action.

Encl : As above.

5.30 PM.
left
19/2
So (CCdy)
Yours faithfully,
62303/02/10
(S. Bhattacharyya)
Sr. Govt. Advocate & In-Charge.

22486621
4806

300 287 279
Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2981

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,
1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M

By hand
through special messenger

Dated 22.01.2010

To
The Senior Govt. Counsel,
Ministry of Law of Justice
Department of Legal Affairs,
11, Strand Road, Kolkata-700001.

Your Ref.:File No.:909/Home/09-III dt.29.07.09

Re.: : W.P.No. 27541 (W) of 2006
Sri Ashim Ganguly & Anr.
Vs.
Union of India & Ors.

(The pil matter is pending in the High Court, Calcutta for adjudication)

Dear Sir,

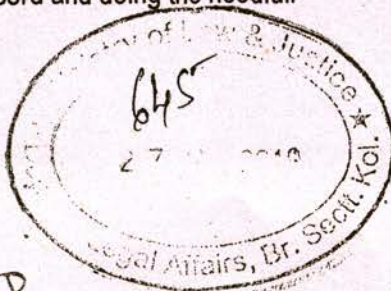
Kindly refer to my letter dated 23rd December, 2009 by which I brought to your notice about out come of hearing on 18.11.2009.

In this connection, I would like to place it on your record that the matter was listed in the peremptory list of cases dated 15.01.2010 of their Lordships the Hon'ble Justice Mr. Mohit S. Shah, Chief Justice and the Hon'ble Justice Bhattacharya and taken up for hearing. At the time of its hearing on 15.01.2010, I myself led. by the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf.

The matter was heard at length. After hearing the Ld. Advocates for the parties their Lordships directed that the matter will be listed on 19th February 2010 for further hearing.

This is for your record and doing the needful.

Thanking you,



Yours faithfully,

Tarun Kumar Ghosh
Advocate.

22.01.2010

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जारी किया
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हस्ताक्षर/Intls.
प्रा० तथा० प्र०/R&L/LNB

No.12014/12/07-Cdn.
Government of India
Ministry of Home Affairs
IS-II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt.4.3.2010

To

04 MAR 2010

By Speed Post

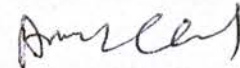
Shri S. Bhattacharyya,
Sr. Govt. Advocate & In-Charge,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road,
Kolkatta - 700001.

Subject: CAN No.2133 of 2008 in Writ Petition No.2754/2006 – Shri Ashim
Kumar Ganguly & Ors versus Union of India & Ors.

Sir,

I am directed to refer to your letter No.909/Home/09-III/308/235
dated 3rd February 2010 on the subject cited above. It is requested to
intimate the present position of the case heard on 19th February 2010.

Yours faithfully,



(AMAR CHAND)

UNDER SECRETARY TO THE GOVT. OF INDIA

Ok

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289781
Tarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cmc.net.in

10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

1586/2009/10
18/5

By hand
through special messenger

Dated 12th April 2010

To
The Senior Govt. Counsel,
Ministry of Law of Justice
Department of Legal Affairs,
11, Strand Road, Kolkata-700001.

Your Ref.: File No.: 909/Home/09-III dt. 29.07.09

Re.: : W.P.No. 27541 (W) of 2006
Sri Ashim Ganguly & Anr.
Vs.
Union of India & Ors.



(The pil matter is pending in the High Court, Calcutta for adjudication)

Dear Sir,

Kindly refer to my letter dated 22.01.2010 by which I brought to your notice about out come of hearing on 15.01.2010.

In this connection, I would like to place it on your record that the matter was listed in the peremptory list of cases dated 09.04.2010 of their Lordships the Hon'ble Justice Mr. Mohit S. Shah, Chief Justice and the Hon'ble Justice S.P. Talukdar and taken up for hearing. At the time of its hearing on 09.04.2010, I myself led. by the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf.

The matter was heard at length. After hearing the Ld. Advocates for the parties their Lordships directed that the matter will be listed on 18.06.2010 for further hearing.

This is for your record and doing the needful.

Thanking you,

Yours faithfully

Tarun Kumar Ghosh
Advocate.

12.04.2010

K. MURALIDHARAN
DEPUTY SECRETARY
Ω 24617196

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS
लोक नायक भवन, खान मार्केट
LOK NAYAK BHAWAN, KHAN MARKET
नई दिल्ली-110003
NEW DELHI-110003

Dated: 11th June, 2010.

Dear Sir,

15 JUN 2010

Please refer to my telephonic conversation with you regarding the pending court cases likely to come up for hearing on 18.6.2010 relating to Netaji Subhash Chandra Bose.

2. The following are the three cases:

- (i) W.P.(W) 8215 of 2008 : Subhash Chandra Basu and Another Vs. Union of India & Others..

This writ petition relates to reappointing/reopening of Justice Mukherji Commission of Inquiry (JMCI) report for conducting further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose and to produce all relevant records. Shri T.K. Ghose is the Central Government Advocate in this case. This petition is to be heard along with Writ Petition No.2003 of 2006 – Rudra Jyoti Bhattacharya and Ors. Vs. Union of India & Ors. Parawise comments of this Ministry were sent on 2.4.2009 and was listed for hearing on 9.4.2010. The counter affidavit is yet to be filed by the Central Government counsel and it was required to be filed by 21.5.2010. The Counsel has informed that he would take extension of time for filing the three affidavits up to 7th June. The next date of hearing has now been fixed on 18.06.2010.

- (ii) Two Draft Supplementary Affidavits have been delivered on 13/14.05.2010. The Writ Petition No.2003 of 2006: Rudra Jyoti Bhattacharya & Ors. Vs. Union of India & Ors. regarding the action taken report on the Justice Mukherji Commission Enquiry Report on the Table of both Houses of Parliament, for filing before the Hon'ble High Court.

Contd.....

- (iii) Writ Petition (W) No.27541 of 2006: Ashim Kumar Ganguly and Another Vs. Union of India & Others regarding Government refraining from incurring further public money from Government exchequer for maintenance and upkeep of Renkoji Temple in Japan and refrain Government from incurring any expenditure to Netaji Subhash Research Bureau. This case will also be listed for hearing on 18.06.2010.

3. I shall be grateful if you could kindly arrange and expedite the three cases. In case, an officer is required to be deputed for conferencing the same may also be conveyed to us.

With regards,

Yours sincerely,

(K. Muralidharan)

Shri Farooq M. Razak,
Additional Solicitor General, Kolkata,
19, Balu Hakak Lane,
Park Circus,
Kolkata-700017.

SENDING REPORT

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Jun. 16 2010 12:22AM

YOUR LOGO : DS(S)MHA
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BY SPEED POST/OUT TODAY

Ph. No.22486516
FAX No.22485215

No.402/Home/06-II
Govt. of India
Ministry of Law & Justice
Deptt. of Legal Affairs
Branch Sectt., Kolkata

S.S.Sarker,
ILS
Addl. Govt. Advocate

11, Strand Rd., Middle Bldg.,
2nd floor, Kolkata-1.

Date: 01.09.10.

To
The Secretary,
Ministry of Home Affairs,
IS-II Division: Cdn Section,
9th floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Attn. Shri Amar Chand,
Under Secretary

Sub: W.P. No. 2003 of 2006- Shri Rudra Jyoti Bhattacharya & Ors.
-Vs-Union of India & Ors.

Sir,

Please find enclosed herewith the communication of Md. Nizamuddin, Counsel engaged in the aforesaid matter, which is self explanatory.

You are requested to send your necessary instruction immediately for doing the needful.

The matter is due on 10th September, 2010.

Encl: As above

Yours faithfully,

(S.S.Sarker)

Addl. Govt. Advocate

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MR. NIZAMUDDIN

B. Sc. LL. B
ADVOCATE HIGH COURT, CALCUTTA
BAR & SOLLATION, ROOM NO. 12



13, MARINE
KOLKATA - 700016
Phone: 22526730
Mobile: 9831673933
: 9038535952

Date: 23.08.10

To
Mr. S.S. Sarkar
Addl. Govt. Advocate
Ministry of Law & Justice
11, Strand Road
Kolkata - 1

2006 3
Re: MOL. F. No. 402/Home/2009/- Lit-II
W.P. No. 2003 of 2006
Rudra Jyoti Bhattacharya & Ors.
-Vs-
Union of India & Ors.

Dear Sir,

The aforesaid Public Interest Litigation (PIL) involving the issue of the report of Mukherjee Commission and about controversy over the death of Subhas Chandra Bose was partly heard at length on 20.08.10 by The Hon'ble Chief Justice & The Hon'ble Justice Bhaskar Bhattacharya and Their Lordships after hearing both sides, have been pleased to fix the matter for further hearing on 10.09.10 as specially fixed kindly take note that in the aforesaid case a new development has taken place that is the petitioner has brought to the notice of the Hon'ble court in course of hearing that a newspaper report published in 'TIMES OF INDIA' Pune addition has reported that one City based NGO namely world Peace Centre (WPC) will bring the ashes of Netaji Subhas Chandra Bose from Japan to India by the next Independence Day and the India Government has given clearance in this regard to which the court has taken exception as to how the Government of India can such a decision when the matter is subjudice before Their Lordships. The Hon'ble Court has kept that newspaper reporting with the courts' record and also directed the petitioner to file the said report by way of affidavit and also asked us to take instruction from the Govt. about the truthfulness of such reports before the next date of hearing.

In the matter I was led by Ld. Addl. Solicitor General.

You are requested to kindly treat this a very urgent and do the needful for compliance of the order of the Hon'ble Court by furnishing the instruction as has been asked by the Hon'ble Court and also see that the officer concerned immediately contacts me or the Ld. Addl Solicitor General for some vital discussion.

This is for your information and record.

Mohamed Tizud
Advocate

P. K. F.
23/8

Mohamed Tizud

23792285

Word Atk. Sh. R. G. G. J.
 JSR Co

KIND ATTN: K. MURALIDHARAN
 DEPUTY SECRETARY (SECURITY)

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Netaji's ashes to be brought to city by next Independence Day

TIMES NEWS NETWORK

Pune: City-based World Peace Centre (WPC) will bring the ashes of freedom fighter and Azaad Hind Sena founder Subhash Chandra Bose, who sought Japan's assistance for India's freedom movement during World War II, to Pune by the next Independence Day.

The centre has received clearance from the Union government through Indo-Japan association and the ashes that are currently in Tokyo's Netaji Subhash Chandra Memorial will be handed over to the WPC by the next Independence Day.

Addressing a news conference here on Monday Vishwanath Karad, chairman of World Peace Centre, said, "We have communicated with Kazuo Kaneko and Gen Kurosaki, who look after the Bose



A file photo of Subhash Chandra Bose during his visit to Pune

Memorial in Japan. The procedure for official transfer of the ashes to the centre has been initiated with

the help of Maharashtra businessman Balasaheb Deshmukh, who is in Japan since the past three decades. Homage will be paid at the Red Fort in New Delhi and the ashes would be deposited in the Ganga river on August 18 next year." Bose was killed on August 18 in Japan during the end of WW-II.

Deshmukh, who was also present for the news conference, said, "I will be assisting the WPC to bring Bose's ashes to his own country and perform the last rituals. Bose has a daughter from his German wife, who is currently in Germany. Attempts to contact her failed. Since she is the only successor of the Indian leader, we need her consent to perform the last rituals. Meanwhile, the Japanese government has permitted the WPC to initiate the procedure to bring back the ashes."

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F.No.I-12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
(Internal Security.II Division)

9th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi-110003. Dated: 3rd Sept. 2010.

Office Memorandum

Subject: Court case filed in Kolkata High Court regarding the alleged disappearance of Netaji Subhash Chandra Bose.

The undersigned is directed to convey that there are three court cases filed on the above subject matter in the Kolkata High Court and the hearing is going on. The Addl. Solicitor General, Kolkata has forwarded a copy of the news item appeared in Pune Times dated 18th August, 2010 a copy, which is self-explanatory, is enclosed.

2. As may be seen it has been mentioned in the Article that the Pune City based World Peace Centre (WPC) has received clearance from the Union Government through Indo-Japan Association for bringing the ashes that are currently in Tokyo's Netaji Subhash Chandra Memorial and will be handed over to the WPC. MHA has not received any such request and not given any clearance in this regard.

3. Addl. Solicitor General has desired to know whether Ministry of External Affairs has received any request from WPC in the matter and whether they have given any permission to this effect. The next hearing is fixed on 10th September, 2010 and it is requested that information may kindly be provided by return fax so that Addl. Solicitor General can be informed suitably.

Issued by
PB.No-6A of 09
03/9/10

(K. Muralidharan)
Deputy Secretary(S)
Telefax: 24617196

Shri Sandeep Chakraborty,
Director (Japan),
Ministry of External Affairs,
South Block,
New Delhi.

FAX : 23016514

Encl: as above.

310

03 SEP 2010 247292

Copy to: ✓ Shri Farooq M.Razak, Addl. Solicitor General, Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata-700017.

Issued
by speed post

R-S I
pl-issue
03/9/10

(K. Muralidharan)
Deputy Secretary(S)
Telefax: 24617196



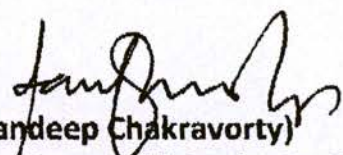
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Ministry of External Affairs
East Asia Division

**Court Case filed in Kolkata High Court regarding the alleged disappearance of Netaji
Subhash Chandra Bose**

Reference your O.M. No. I-12014/5/2007-Cdn dated 3rd September, 2010, regarding the news item which appeared in Pune Times on 18th August, 2010. Ministry of External Affairs has not received any such request and not given any clearance in this regard. We have also ascertained the facts from our Mission in Tokyo who have conveyed that the Article is farfetched and not based on facts.


(Sandeep Chakravorty)
Director (China/EA)

Ministry of Home Affairs (Internal Security.II Division) – Shri K. Muralidharan,
Deputy Secretary (S)

MEA U.O. No. C/103/1/2010-JP

03 September, 2010

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DISTRICT: KOLKATA

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

2754-1(W)

W.P.NO. 2754(W) of 2006.

-AND -

In the Matter of:

Ashim Kumar Ganguly & Anr.

.... Petitioners

- Versus -

Union of India & Ors.

.... Respondents.

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONER ASHIM KUMAR GANGULY TO WRIT PETITION NO. 2754(W) of 2006 BASED ON SUBSEQUENT FACTS.

I, Ashim Kumar Ganguly, son of Late M.C. Ganguly, by profession-Lawyer, by faith-Hindu, residing at 90 A.K. Mukherjee Road, Flat No. 12, 3rd Floor, Kolkata-700 090, do hereby solemnly say and affirm as follows:-

1. That some times in the year 1997 challenging the alleged attempts made by the then Central Government to bring the ashes allegedly kept in the Renkoji Temple, Japan, your petitioner being a public spirited person and a lawyer of this Hon'ble Court moved the writ petition No. 1805(W) of 1997, whereby and whereunder, inter-alia, a writ of mandamus was prayed for from this Hon'ble Court for a direction upon the Central Government agencies not to take any steps and/or decision about the bringing back the ashes allegedly staked in the Renkoji Temple of Japan

In the name of National Hero Netaji Subhas Chandra Bose.

Having heard the said application the Division Bench of this Hon'ble Court presided over by the then Chief Justice Prabha Sankar Mishra and the Hon'ble Justice Barin Ghosh amongst the other, inter alia, held "... It is order that before accepting the ashes which are allegedly kept at the Rankeji Temple, Japan as that of Netaji Subhash Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Rankeji Temple, Japan are that of Netaji Subhash Chandra Bose and take the people of India in confidence...."

Photo copy of the order dated 7th April, 1998 is annexed hereto and marked as Annexure-"P".

2. The said order was duly communicated to all the authorities concerned.

3. Your petitioner in an inevitable circumstances had to address a letter to the then Prime Minister Sri Atal Bihari Bajpayee, Sri Jaswant Singh the then Foreign minister and Sri Lal Krishna Adwani, the then Home Minister, for their initiation in bringing back the alleged ashes staked in the Rankeji Temple, Japan in the name of Netaji Subhas Chandra Bose, upon receiving the aforesaid letter of the petitioner a reply was given to

contd....3

given to the petitioner by the Ministry of Home Affairs, Government of India being the letter No. VI/11034/45/2000-IS(D:111), whereby and whereunder it was intimated to the petitioner that to the cumulative effect of the order of the Hon'ble Court the Central Government appoint a Commission of Inquiry u/s. 3 of the Commission of Inquiry Act, 1952 consisting of Retired Supreme Court Judge, Hon'ble Justice Mr. M.K.Mukherjee as to enquire into all the facts and circumstances relating to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent development connected therewith, inter-alia, as to whether the ashes in the Japanese Temple are of ashes of Netaji.

The Photo copy of the letter by the Home Ministry, Government of India is annexed hereto and marked as Annexure-"P-1".

4. Your petitioner states and submits that it is pertinent to enunciate that Justice Manoj Mukherjee Commission is the First Judicial Commission constituted under the Commission of Inquiry Act '1952, and it is the commission constituted by the Government of India by virtue of the Judicial intervention .

It is also pertinent to enunciate that, before Justice Manoj Mukherjee Commission there had been once committee and one commis:

contd....4

318.
For kind attention: *Ant Krishna Bose*
Chairperson N.R.C.

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- 4 -

constituted by the Government of India, namely Shahnawaj committee held in 1955 and next commission held in 1970 by retired Justice K.D. Kholsa.

5. Mr. Justice Manoj Mukherjee Commission(Retired) instituted in the year 1999 to inquire into the controversy surrounding the reported death of Netaji Subhas Chandra Bose in 1945.

The purpose of commission was to ascertain the following:-

- i. Whether Netaji Subhas Chandra Bose is dead or alive;
- ii. If he is dead whether he died in Plancrash, as alleged;
- iii. Whether the ashes in the Japanese temple are ashes of Netaji;
- iv. Whether he has died in any other manner at any other place and, if so, when and how;
- v. If he is alive, in respect of his whereabouts.

6. The conclusion of the Justice Manoj Mukherjee Commission reported in Chapter 5 at Page 123 of the report submitted by Justice Manoj Mukherjee(Retired) to the Government are as follows:-

- a) Netaji Subhas Chandra Bose is dead;

contd...5

- b) He did not die in the plane crash as alleged;
- c) The ashes in the Japanese Temple are not of the Netaji;
- d) In absence of any clinching evidence a positive answer cannot be given and;
- e) Answer already given in (a) above.

The Photo copy of the conclusion submitted by Justice Manoj Mukherjee(Retired) is annexed hereto and marked as Annexure-
"P-2".

7. Your petitioner states that having received the report of Justice Manoj Mukherjee (Retired) and based on the same a Writ Petition was filed before this Hon'ble Court in 2006 being W.P.NO. 2754(W) of 2006(Ashim Kumar Ganguly and Anr. Vs-Union of India and others). In the said writ petition the cardinal prayer was as follows:-

- 1) to issue a writ of mandamus upon the Central Government to refrain from spending further Public Money from the Government Exchanger for Maintain and upkeeping the Renkoji Temple of Japan and allegedly keeping the ashes therein as that of Netaji Subhas Chandra Bose ;

contd...6

- 7 -

- ii) A prayer for prohibiting the Respondent Central Government from incurring any amount from Public Exchequer for preservation and reservation and/or maintenance of Renkoji Temple in Japan allegedly keeping the ashes as that of Netaji Subhash Chandra Bose.
- iii) A prayer was made for refraining from incurring any amount for Netaji Research Bureau being the Respondent No. 5 from Public Exchequer and to continue Research work on any issue pertaining to Netaji in particular about the alleged death of Netaji Subhas Chandra Bose and the ashes alleged allegedly kept in the Renkoji Temple of Japan.
- iv) An order for restraining the respondent Central Government not to take any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple, Japan till the disposal of Writ Petition 27541 (W) of 2005.

8. The instant supplementary affidavit inevitably necessitated to affirm by the petitioners based on subsequent fact which has come like a bolt from the blue, that a Pune (Maharashtra) based Newspaper, the times News Network published

- 1 -

that a city based World Peace Centre (WPC) would bring the ashes Netaji Subhash Chandra Bose which has received the clearance from the Union Government through Indo Japan Association and the ashes that are currently in Tokyo's Netaji Subhas Chandra Memorial will be handed over to the World Peace Centre by the next Independence day. The said Publication has been downloaded which is annexed hereto and marked as Annexure - "P-3".

Be it mentioned here that Netaji is not now confined to a particular region, or any family or any Governments or any organization and he has become the concerned for all. So any unilateral decision shall create serious consequences upon the public sentiment at large.

9. Your petitioner being the petitioner in the writ petition No.1805 of 1997, challenged any attempt about bringing back the alleged ashes kept in Japan as that of Netaji Subhash Chandra Bose and in the said writ petition the Hon'ble Court had given a categorical direction on the same score. A commission was also instituted, whereby it has been established that the ashes staked in Japan are not of Netaji Subhash Chandra Bose. Therefore, the question of bringing back and/or ~~preservingxxxxxxixingx~~

- 8 -

preserving or staking ashes in Japan as that of Netaji Subhas Chandra Bose by any agency either in India or elsewhere are violative of the Commission's report. The Central Government is therefore, has to come forward with its specific opinion about the report published in time's news Network at Pune (Maharashtra) as to ascertain the veracity of the said report and to bring the people of India into confidence thereto and to declare whether Central Government has given any clearance and/or assent and/or accredited either to the Pune based World Peace Centre or any other organization in India or elsewhere, to the effect as published in the Times News Network and also the said organization WPC (World Peace Centre) be declared banned by the Central Government.

10. That your petitioner states and submits that the instant affidavit may please be treated as part and parcel of the writ petition No. 2754 of 2006 and heard analogously with the same.

12. That the statements made in paragraphs 1, 2, 3, 5, 6, 7, 8

... 6

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- 9 -

are true to my knowledge and based on record and rest
are my humble submission before this Hon'ble Court.

Prepared in my office

SD
Deponent is known to me.

and identified by me.

Clerk to Mr.

SD
Advocate.

SD
Advocate.

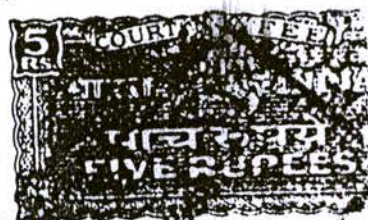
Solemnly affirmed before me
on this the 10th day of
September, 2010.

SD
COMMISSIONER.

321
W.P. No 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
~~Ordinary Original Jurisdiction~~
Original Side



Seal / 28-17-98
The Hon'ble The Chief Justice

And

The Hon'ble Justice

Barin Ghosh

President of the Union of India

In the Matter of : An application under Article 226 of the Constitution of India;

And

In the Matter of : Public Interest Litigation;

And

In the Matter of : A writ in the nature of Mandamus;

And

In the Matter of : A writ in the nature of Certiorari;

And

In the Matter of : Prohibition and/or any other such appropriate writ or writs, order or orders, direction or directions;

And

In the Matter of : Investigation in connection with the ashes of Netaji Subhas Bose as declared and/or announced by the Govt. of India

And

In the Matter of : Inaction/non-action on the part of Govt. of India not having declared anything about the death of Netaji Subhas Chandra Bose before having taken any initiative to bring the ashes of Netaji Subhas Chandra Bose from Hencogi temple of Japan;

And

In the Matter of : Ashim Kumar Ganguly, son of Late Netaji Chandra Ganguly, residing at 23/A, Sib Krishna Da Lane, P.O. Kankurbachi, Calcutta- 700 054.
.... Petitioner

Versus

1) Govt. of India, service through Secretary, Ministry of Defence, New Delhi, (2) Govt. of West Bengal, service through Secretary, Home Department, Writers' buildings, Calcutta-1 (3) Ministry of Human Research & Development having its office at New Delhi ; (4) Ministry of Home affairs, Govt. of India, having its office at North Block, Central Secretariat, New Delhi- 4; (5) Ministry of External affairs, service through the Secretary having its office at South Block, Central Secretariate, New Delhi.

..... Respondents

Upon reading a petition of Ashim Kumar Ganguly, abovenamed (hereinafter referred to as 'the said petitioner') and his affidavit in verification thereof affirmed on the twenty ninth day of August, one thousand nine hundred ninety-seven and the exhibits annexed to the said petition and marked respectively 'A' and 'B' all filed on the twenty ninth day of August, one thousand nine hundred ninety seven. And upon hearing Mr. Subrata Mukherjee (Mr. Rajesh Ganguly appearing with him) Advocate for the said petitioner and Mr. U.P. Mukherjee, Advocate for the respondents abovenamed and upon the Advocate for the respondent Union of India abovenamed echoing the observations made by the Supreme Court of India in (Union of India & Ors.-Vs.- Bijan Ghosh & Ors.) (1998 W.B.L.R. (SC) Page 9) stating before this court that, without there being a conclusive proof and/or otherwise determined in accordance with law the Union of India cannot accept that Netaji Subhas Chandra Bose

in Taiwan on eighteenth day of August, one thousand nine hundred forty five or at any later date and that the ashes which are said to be kept in the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and this court having no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose And it being difficult to accept that the Defence Minister of the Country has made a statement of such consequences as included in the said petition without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported And the said petitioner through the said petition now alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at the Kencogi Temple, Japan And in view of the assurance that nothing of the sort is likely to be done by the Government of India.

It is ordered that before accepting the ashes which are allegedly kept at the Kencogi Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in Confidence And it is further ordered that this matter is disposed of accordingly.

Witness: Shree Prabha Shanker Mishra, the Chief Justice at Calcutta aforesaid the seventh day of April in the year one thousand nine hundred and ninety-eight.

Gouranga Chatterjya..... Advocate.

Tapar Ch. Dutt..... Advocate.

S. Chatterjee..... Advocate.

P. Ghosh
03.8.98.
For Registrar.

G. B.

Attested by
the

17/8

17/8/98

Attested by
(Signature)

Attested by
(Signature)

324
XXXI No. 1805

311 324
OF 1897

IN THE HIGH COURT AT CALCUTTA

~~Ordinary Original Civil Jurisdiction~~

Constitutional Writ Jurisdiction

Original side

Ashim Kumar Ganguly

Union of India & Urs.

- (i) Date when the decree or order was completed
(ii) Date of application for copy
(iii) Date of receiving the requisite number of folios and stamp
(iv) Date of delivery of the requisite folio and stamp
(v) Date on which the copy is ready for delivery
(vi) Date when delivery was taken of the copy by the applicant

Order made of the 7th day of
April, 1998.
Filed this 10th day of
August, 1998.

K. Rakshit
Superintendent,
Order Department.

Superintendent,
Clerks' Department
High Court, C.S.

Rajesh Kumar Ganguli
Advocate.

328

317/35

P-1

Registered

No.VI/11034/45/2000-IS(D.III)

Government of India
Ministry of Home Affairs

Dated. 25-2-2000

To : Shri Ashim Kumar Ganguly
MA,LLB,P.G., Diploma in Management,
Advocate, High Court, Calcutta,
Bar Association,
Room No.12 (Ground Floor)
Calcutta.

Subject:- Letters addressed to Prime Minister, Home Minister and Minister for Foreign Affairs inviting attention to the order dated 17.4.1998 passed by Hon'ble High Court at Calcutta in connection with the alleged ashes of Netaji Subhas Chandra Bose.

Sir,

Kindly refer to your letter dated 1.2.2000 on the said subject. In this connection you will kindly appreciate that the Government is already aware of the order dated 17.4.1998 passed by a Division Bench of the Hon'ble High Court at Calcutta in Writ Petition No.1805 (W) of 1997. This order was also followed by another order of the Hon'ble High Court at Calcutta in another Writ Petition No.281 of 1998 in which comprehensive directions were given for a vigorous inquiry in accordance with law, if necessary, by appointing a Commission of Inquiry. At the same time, there was a Motion adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand was made for a fresh inquiry into the alleged disappearance of Netaji Subhas Chandra Bose. The cumulative effect of all this is that the Central Government has already appointed a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952) consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Supreme Court of India. The Commission has been asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including

Contd..2/-

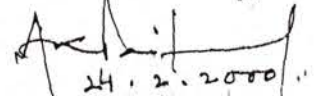
326

313 326

- 2 -

inter-alia as to whether the ashes in the Japanese Temple are the ashes of Netaji. All the connected issues are naturally before the Commission of Inquiry and it is expected that these issues will receive due attention of the Commission in time.

Yours faithfully,



24.2.2000
(A.K. Paitandy)
Director (IS-I)

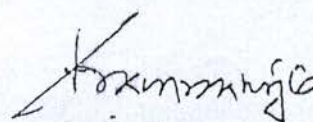
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

Netaji's ashes to be brought to city by next Independence Day

TIMES NEWS NETWORK

Pune: City-based World Peace Centre (WPC) will bring the ashes of freedom fighter and Azaad Hind Sena founder Subhash Chandra Bose, who sought Japan's assistance for India's freedom movement during World War II, to Pune by the next Independence Day.

The centre has received clearance from the Union government through Indo-Japan association and the ashes that are currently in Tokyo's Netaji Subhash Chandra Memorial will be handed over to the WPC by the next Independence Day.

Addressing a news conference here on Monday Vishwanath Karad, chairman of World Peace Centre, said, "We have communicated with Kazuo Kaneko and Gen Kurosaki, who look after the Bose



A file photo of Subhash Chandra Bose during his visit to Pune

Memorial in Japan. The procedure for official transfer of the ashes to the centre has been initiated with

the help of Maharashtra businessman Balasaheb Deshmukh, who is in Japan since the past three decades. Homage will be paid at the Red Fort in New Delhi and the ashes would be deposited in the Ganga river on August 18 next year." Bose was killed on August 18 in Japan during the end of WW-II.

Deshmukh, who was also present for the news conference, said, "I will be assisting the WPC to bring Bose's ashes to his own country and perform the last rituals. Bose has a daughter from his German wife, who is currently in Germany. Attempts to contact her failed. Since she is the only successor of the Indian leader, we need her consent to perform the last rituals. Meanwhile, the Japanese government has permitted the WPC to initiate the procedure to bring back the ashes."

329

DISTRICT : KOLKATA

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.No. 2754 (W) of 2006 ;

- And -

In the matter of ;

Ashim Kumar Ganguly & Anr.

...Petitioners.

- Versus -

Union of India & Ors.

... Respondents.

SUPPLEMENTARY AFFIDAVIT
on behalf of the petitioner.

Mr. Subhas Chandra Bose,
Advocate,
Bar Association, Room No.12,
High Court, Calcutta.

330 317 307

Most Immediate
Court Case

No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 22nd October, 2010.

27th

Office Memorandum

Sub: W.P. No. 27541 (W) of 2006 - Shri Ashim Kr. Ganguly & Ors Vs. Union of India & Ors

Ref: OM No. 25/4/NGO-XVI dated 3rd December, 2007

The undersigned is directed to forward a copy of the Supplementary Affidavit on behalf of petitioner Shri Ashi Kumar Ganguly in the aforesaid matter. Ministry of External Affairs (MEA) is requested to send their comments on the relevant paras immediately by 2nd November, 2010 to enable this Ministry to forward parawise comments to the Government Counsel at Kolkata High Court to prepare the necessary affidavit.

Encls: One(1)

W. L. Shrivastava

(Smt. L.P. Shrivastava)

Under Secretary to the Government of India
Tel: 24610467

Shri Sandeep Chakravorty,
Director (Japan),
Ministry of External Affairs,
South Block, New Delhi.

Issued
PB 15/10/2010
27/10/10

331

By Speed Post 318

**Most Immediate
Court Case**

210

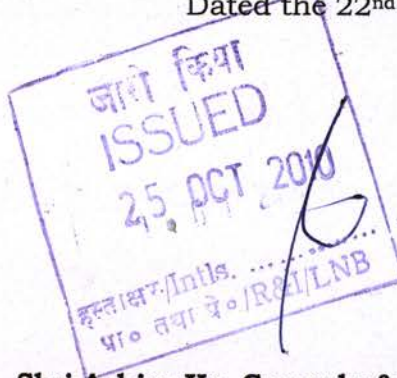
No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 22nd October, 2010.

R+I
to issue Please

Ruchika
25/10/10..
To

Shri G.S. Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
11, Strand Road,
Kolkata



25 OCT 2010

Sub: W.P. No. 27541 (W) of 2006 - Shri Ashim Kr. Ganguly & Ors Vs. Union of India & Ors

Sir,

I am directed to refer to your letter No.1204/Home/06-III/2159/3601 dated 21.9.2010 on the above mentioned subject and to say that the parawise comments are being prepared on the supplementary affidavit filed by the petitioner.

2. I am also directed to say that the parawise comments on the main petition were sent by this Ministry on 2nd April, 2009 which have been followed time and again requesting for the affidavit which was required to be prepared and sent to this Ministry for vetting. The same has not been received in spite of repeated requests. The parawise comments on the main writ petition had also been handed over by Shri Amar Chand, Under Secretary of this Ministry during his visit to Kolkata on 14th May, 2010 to Shri T.K. Ghosh and by the US (Coord.) to ASG also during the visit of the Under Secretary and Section officer to Kolkata High Court on 8th July, 2010. Smt. S. Bhattacharya, Additional Government Advocate/Incharge, Branch Sectt., Kolkata had assured them that parawise comments on the main writ petition would be sent to the Ministry for getting affirmed by the Oath Commissioner at Delhi High Court which could thereafter be sent to them for filing in the Hon'ble Kolkata High Court. However, the same is still awaited. This may be expedited.

Yours faithfully,

(K. Muralidharan)

Deputy Secretary to the Govt. of India
Tel: 24617196

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Copy to:

25 OCT 2010

1. Shri Farooq M. Razak, Additional Solicitor General Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata- 700 017 with a request to kindly take up the issue with the concerned officers for urgent action.
2. Smt. S. Bhattacharya, Additional Government Advocate/Incharge, Branch Sectt., Kolkata with a request to kindly take up the issue with the concerned officers for urgent action.

(K. Muralidharan)
Deputy Secretary to the Govt. of India

~~241 to Issue~~
~~Plea~~

333

320

Most Immediate
Court Case

318

No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 11th November, 2010.

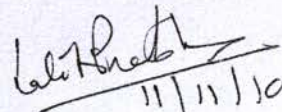
Office Memorandum

Sub: W.P. No. 27541 (W) of 2006 - Shri Ashim Kr. Ganguly & Ors Vs. Union of India & Ors

Ref: OM No. 25/4/NGO-XVI dated 3rd December, 2007

The undersigned is directed to refer to this Ministry's OM of even number dated 27th October, 2010, forwarding a copy of the Supplementary Affidavit on behalf of petitioner Shri Ashim Kumar Ganguly in the above Court Case.

2. Ministry of External Affairs (MEA) was requested to send their comments on the relevant pāras by 2nd November, 2010 to enable this Ministry to forward parawise comments to the Government Counsel at Kolkata High Court to prepare the necessary affidavit. The reply of MEA is still awaited. MEA is requested to expedite the comments and send the same by 15.11.2010.


11/11/10

(Smt. L.P. Shrivastava)

Under Secretary to the Government of India
Tel: 24610467

Shri Sandeep Chakravorty,
Director (Japan),
Ministry of External Affairs,
South Block, New Delhi.

Issued vide

NCB 13/09

Ruchika

12/11/2010.

324

No.12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

321
321
313

MOST IMMEDIATE

By fax

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 15th November, 2010

Office Memorandum

Sub: Court case filed in Kolkata High Court regarding the alleged disappearance of Netaji Subhash Chandra Bose

The undersigned is directed to convey that that there are three Court cases filed in the Hon'ble High Court, Kolkata on the above subject and the case has been fixed for final hearing on 19.11.10.

2. The Additional Solicitor General Kolkata has desired to know the details of the expenditure incurred by the Government of India on the maintenance of ashes of Netaji Subhash Chandra Bose kept in the Renkoji Temple in Japan. A copy of the letter from the Additional Solicitor General is enclosed.

3. It is requested that the above information be sent to this Ministry by return fax. In case the information cannot be furnished, a representative of Ministry of External Affairs may attend the Final Hearing on 19th November , 2010 at Kolkata.

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel: 24617196

Shri Sandeep Chakravorty,
Director (Japan),
Ministry of External Affairs,
South Block, New Delhi.

File No I / 12014/12/07-Cdn

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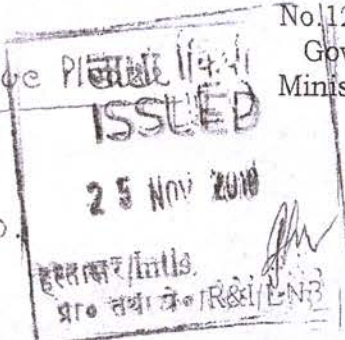
By Speed Post

314

R+I to Issue

Rudhika

24/11/2010.



No. 12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 24th November, 2010.

25 NOV 2010

To

Shri Farooq M. Razak,
Additional Solicitor General Kolkata,
19, Balu Hakak Lane,
Park Circus,
Kolkata- 700 017

Sub: (i) 2003/2006 Rudra Jyoti Bhattacharya Vs. Union of India & Ors

(ii) 27541 of 2006 - Ashim Kumar Ganguly & Ors Vs. Union of India & Others

(iii) WP No. 8215(W)/08 - Subhash Chandra Basu & Ors Vs. Union of India & Ors.

Sir,

This letter is in pursuance of the discussions & briefing held with you in Kolkata in your Chamber and the hearing which took place before the Court of Chief Justice on 19th November, 2010 at 2.00 P.M. It had been mentioned by the Advocate of the Petitioners that the Counter Affidavit had not been filed in the Writ Petition No. 8215(W) of 2008- Subhash Chandra Basu & Ors Vs. Union of India & Ors. The Hon'ble Court had directed that the Union Government should file the affidavit on this petition and final hearing will now take place on 13th January, 2011.

2. In this connection it may be conveyed that a copy of the parawise comments had been sent to Smt. S. Bhattacharya, Ministry of Law, Kolkata Branch on 2.4.2009 and reminders had also been sent to her for forwarding the draft affidavit to Ministry of Home Affairs but the same have not yet been received in spite of repeated reminders. A copy of the parawise comments had also been handed over personally to Shri T.K. Ghosh. Government Advocate on 14.5.2010 by Shri Amar Chand, Under Secretary, MHA, when he was in

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Kolkata. A copy of the prawise comments had also been handed over to you by Smt.L.P. Shrivastava, US, MHA and Smt. B.K.Rekhi, Section Officer, MHA during their visit to Kolkata on 08.7.2010. They had also apprised Smt. S. Bhattacharya of the fact that the Ministry had not received the draft affidavit till then whereas a copy of the parawise comments had been sent to her on 2.4.2009. She had spoken to Shri T.K. Ghosh and directed him to prepare the draft affidavit and sent to the Ministry. She had directed Smt. L.P. Shrivastava that the affidavit so received may be got affirmed before the Oath Commissioner, High Court of Delhi and sent to them along with 4 copies thereof for filing, but the same has not been received as yet. A copy of letter dated 13th July, 2010 written to Shri Ghosh in this regard is enclosed. Also a copy of letter dated 22nd September, 2010 written to Smt. S. Bhattacharya is also enclosed for information.

3. In view of the above position, it is requested that you may kindly personally look into the matter and also request you to coordinate the case personally with all the concerned Government Advocates and arrange to send the draft affidavit to this Ministry at the earliest i.e. by 8th December, 2010.

Yours faithfully,

Encls: As above

(K. Muralidharan)

Deputy Secretary to the Govt. of India

Tel: 24617196

Copy to:

Smt. S. Bhattacharya, Senior Central Government Advocate and
Incharge, Branch Secretariat, Kolkata

25 NOV 2010



BY SPEED POST

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division-II

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 23rd September, 2010.

To

Ms. S. Bhattacharya
Joint Secretary & Legal Adviser,
Ministry of Law and Justice,
Deptt. Of Legal Affairs,
11 Strand Road, Kolkata-700001

22 SEP 2010

Subject: W.P. No. 8215(W)/08 filed by Shri Subash Chadra Basu & others
Vs. UOI & others

Madam,

I am directed to refer to your letter No. 592/Home/2008/Lit.III/2053/3248 dated 3.9.2010 on the above subject and to convey that a copy of parawise comments of this Ministry on the writ petition has been sent to you vide this Ministry's letter of even number dated 2.04.2009 followed by reminders.

During the visit of undersigned alongwith Smt. L.P. Shrivastava, Under Secretary to Kolkatta on 9th July, 2010, we had met yourself and drawn your attention to the above fact. It was also mentioned that a copy of parawise comments were handed over to Shri Ghosh on 10.5.2010 by Shri Amar Chand, Under Secretary. Yourself had assured that Shri T.K.Ghosh would be asked to prepare affidavit and directed him to send the same to the Ministry which could be typed on green sheet and affirmed by the Oath Commissioner and for that purpose, Under Secretary need not visit Kolkatta again. The necessary affidavit in W.P. No. 8215(W)/08 has not been received as yet.

Attention is invited to this Ministry letter of even number dated 15.7.2010 addressed to Shri T.K.Ghosh, Advocate appointed in this case with a copy to you for information (Copy enclosed). It is requested to get the affidavit prepared on the

~~225~~
~~217~~
~~266~~

Yours faithfully,

23/9/10

(B.K.Rekhi)
Section Officer
22.09.2010

Copy to :

518 23 SEP 2010

Shri Farooq M. Razak, Additional Solicitor General, Kolkata. A copy of parawise comments of this Ministry were also handed over to the ASG during the visit to Kolkata on 8.07.2010.

(19, Balu Hoshpur Lane, Park Circus,
Kolkata - 700 017)



339

326

Speed Post

3/8

No.12014/6/2008-Cdn.
Ministry of Home Affairs
IS-II Division

9th Floor, 'C' Wing, Lok Nayak
Bhavan, Khan Market, New
Delhi, dated the 13th July, 2010.

15 JUL 2010

Shri T.K. Ghosh
Advocate, Bar Association,
Room No. 2, Calcutta High Court
Kolkata.

Subject: Petition No. 8215 (W) of 2008 – Subhash Chandra Basu Vs Union
of India

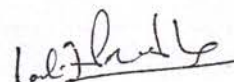
Sir,

I am directed to invite your attention to the copy of parawise comments on the above writ petition handed over to you by Sh. Amar Chand, Under Secretary, MHA on his visit to Kolkata on 14.5.2010 on the directions of Senior Counsel Shri R.N. Das. In this connection your letter dated 12.4.2010 addressed to Senior Govt. Counsel (Shri R.N. Das) on the subject refers.

2. I am also directed to say that Smt. S. Bhattacharya Addl. Govt. Advocate/ Incharge, Branch Sectt., Kolkata has also discussed this matter with you on 9.7.2010 and directed to finalize the affidavit in consultation with Additional Solicitor General, Sh. Farooq Razak. The same may be done within this week to enable the undersigned to obtain the approval of higher authorities before it is got affirmed by the Oath Commissioner, Delhi High Court.

3. An urgent action is requested.

Yours faithfully,



(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India

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Copy to:

SIR

15 JUL 2010

1. ✓ Additional Solicitor General, Sh. Farooq M. Razak, 19, Balu Hakak Lane, Park Circus, Kolkata- 700017.
2. ✓ Smt. S. Bhattacharya, Additional Advocate/Incharge, Deptt. Of Legal Affairs, Branch Sectt., 11 Stand Road, 2nd Floor, Kolkata- 700001 w.r.t. the discussions with her on 9.7.2010 at Kolkata.
3. ✓ Shri R.N. Das, Senior Govt. Council, High Court Kolkata with reference to his discussions with Sh. Amar Chand, Under Secretary, MHA on 14.5.2010.

341

328 320

SPEED POST

No. 1204/Home/06-III/

/ 2592/4833

Govt. of India

Ministry of Law and Justice

Deptt. Of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor (Middle Row Bldg.,)
Kolkata-700 001**Urgent/By Speed Post**

Dated the 10th December, 2010

✓ To
Shri K. Muralidharan,
Deputy Secretary to the Govt. of India,
Ministry of Home Affairs, IS-II Division,
Lok Nayak Bhavan, 9th floor, C Wing, Room No.8,
NEW DELHI- 110 003,

Subject: W.P.No. 27541 (W) of 2006

Sri Ashim Kumar Ganguly & Anr. -vs- Union of India & Ors.

Sir,

This is to inform you that the above matter came up before the Hon'ble The Chief Justice and the Hon'ble Justice Ashim Kumar Roy on 19th November, 2010 when after hearing Their Lordships have been pleased to direct that the matter would come up for **final hearing** on **13th January, 2011**.

Please note that vide this office letter dated 21st September, 2010 addressed to Shri S.K. Malhotra, Deputy Secretary (Legal), Ministry of Home Affairs, Lok Nayak Bhavan, New Delhi, this office has already forwarded a copy of Supplementary Affidavit filed on behalf of Shri Ashim Kr. Ganguly in the above mentioned matter for furnishing parawise comments and necessary instruction so that Affidavit in Opposition can be filed without further loss of time. Please note that we have not yet received any instruction from your end for filing Affidavit in opposition to the Supplementary Affidavit filed by the Petitioner. Since the matter will come up for final hearing on 13th January, 2011, you are requested to take immediate necessary action for filing of Affidavit in Opposition to the Supplementary Affidavit.

✓
20/12
(cc Adv.)

342 329 321
: 2 :

I am enclosing herewith a copy of letter dated 9th December, 2010 received from Shri Tarun Kumar Ghosh, Advocate which speaks for itself.

You are, therefore, requested to do the needful and take immediate necessary action in the interest of the above matter.

Please treat this matter as **most urgent**.

Encl: as above.

Yours faithfully,

S. Bhattacharyya .
(S.Bhattacharyya)

Sr.Govt.Advocate & Incharge

Copy to:

Shri Tarun Kumar Ghosh, Advocate, High Court, Bar Association,
Room No.2, Kolkata – for information and necessary action.

(S.Bhattacharyya)

Sr.Govt.Advocate & Incharge

393
530 322
Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail: barisolo@alcmr.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 039

Visiting Hours : 6 P.M. to 9 P.M.

By hand.

The 09th December, 2010

To
The Senior Govt. Counsel,
Ministry of Law & Justice,
Department of Legal affairs,
11, Strand Road, Kolkata-700001.

Your Ref. file No.902/Home/06-III, dated 29.07.2009

Re: W.P. No.27541 (W) of 2006;

Sri Ashim Ganguly & Anr.

.....Petitioners

-VS-

Union of India & Ors.

.....Respondents

(The Pil matter is pending in the Hon'ble High Court, Calcutta for adjudication.)

Dear Sir,

Kindly refer to my last letter dated 24th August, 2010 by which I brought to your notice about out come of last hearing in the matter on 20.08.2010.

In this context, I would like to place it on your record that the matter was taken up for hearing on 19.11.2010 as listed matter of the peremptory list of cases dated 19.11.2010 of their Lordships the Hon'ble Mr. Jainarayan Patel, Chief Justice and the Hon'ble Justice Ashim Kumar Roy. At the time of its hearing, I myself led by the Addl. Solicitor General Sk. Farooq Razak and the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf before Their Lordships, the matter was heard. After hearing the Ld. Advocates for the respective parties Their Lordships directed that the matter will be listed on 13.01.2011 for final hearing.

In view of the matter, it is pertinent to mention here that the petitioner has filed supplementary affidavit which you have sent to the undersigned. In this context, I think Opposition to the Supplementary affidavit of the petitioner is necessary to be filed on or before the next date fixed. On receipt of telephonic call on 30.11.2010 from you, I have sent following papers to you on 02.12.2010 through my clerk for your record and doing the needful. The following papers are 1) Copy of writ petition, 2) Copy of Supplementary affidavit, 3) Copy of Affidavit-in-Opposition which has already been filed in the Hon'ble High Court.

Thanking you,

Yours faithfully,
Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)

Advocate 09.12.2010

Enclo: As stated above

Room No. 20, LAKSHMI CHAMBER, SUPREME COURT COMPOUND, NEW DELHI-110 031.

344 331 323
Most Immediate
Court Case

No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 29th December, 2010.

Office Memorandum

**Sub: W.P. No. 27541 (W) of 2006 - Shri Ashim Kr. Ganguly &
Ors Vs. Union of India & Ors**

Ref: OM No. 25/4/NGO-XVI dated 3rd December, 2007

The undersigned is directed to refer to this Ministry's OM of even number dated 27th October, 2010, followed by reminder dated 11th November, 2010 and to say that Ministry of External Affairs (MEA) was requested to send their comments on Para No.7, 8 & 9 of the Supplementary Affidavit by 2nd November, 2010 to enable this Ministry to forward parawise comments to the Government Counsel at Kolkata High Court to prepare the necessary affidavit. The reply of MEA is still awaited inspite of reminder dated 11th November, 2010.

2. MEA is requested to expedite the comments and send the same by 31st December, 2010 positively to enable this Ministry to file the Affidavit on behalf of the Ministry of External Affairs.

(K Muralidharan)

Deputy Secretary to the Government of India
Tel: 24617196

Shri Sandeep Chakravorty,
Director (Japan),
Ministry of External Affairs,
South Block, New Delhi.

Issued vide,

PB 14/2010

Ruchika

29/12/2010.

348
332324

Court cases
Most Immediate

F No.I—12014/5/2007-Cdn
Government of India
Ministry of Home Affairs
(Internal Security.II Division)

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 10th January, 2011.

Sub : Writ Petitions filed in Calcutta High Court regarding the
alleged disappearance of Netaji Subhas Chandra Bose

The undersigned is directed to convey that there are three Writ Petitions filed on the above subject matter in the Calcutta High Court and the hearing is going on. The Addl. Solicitor General, Kolkata has forwarded a copy of the news items that appeared in Pune Times dated 18th August, 2010, a copy is enclosed which is self-explanatory.

2. As may be seen it has been mentioned in the Article that the Pune City based World Peace Centre (WPC) has received clearance from the Union Government through Indo-Japan Association for bringing the ashes that are currently in Tokyo's Netaji Subhas Chandra Memorial and will be handed over to the WPC. MHA has not received any such request and has not given any clearance in this regard.

3. It has been asserted from the Ministry of External Affairs that they have not given any approval to any of the NGOs in the matter. Ministry of Culture who are concerned with the celebrations of Birth / Death anniversaries of VIPs is requested to inform this Ministry if they have given any permission to this effect. The next date of hearing for the three Writ Petitions has been fixed for 13th January, 2011.

4. It is requested that information may be provided immediately by return FAX so that necessary Affidavit could be filed in the Hon'ble High Court of Calcutta.

(K Muralidharan)
Deputy Secretary(S)
Tel.:24617196
Fm

Shri K S Lather,
Deputy Secretary(C&M)
Ministry of Culture
Ground Floor, Vigyan Bhawan Annexe
New Delhi.

Issued vide PB No. 14 of 2010

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No. 1-12014/5/2007-NCB
Government of India
Ministry of Home Affairs
IS-II Division

'C' Wing, 9th Floor,
Lok Nayak Bhawan, Khan Market,
New Delhi the 17th January, 2011

Office Memorandum

07 JAN 2011

- R+I to issue please
Rachika
6/1/2011.
- Sub: (i) W.P. No. 8215 (W)/2008 filed by Shri Subhash Chandra Basu & Others Vs. Union of India & Ors.
(ii) W.P. No. 2003/2006 -Rudra Jyoti Bhattacharya & Ors Vs. Union of India & Ors
(iii) W.P. No.27541 (W) of 2006 -Ashim Kumar Ganguly & Ors Vs. Union of India & Ors regarding Death of Netaji Subhash Chandra Bose

The undersigned is directed to invite your kind attention on the above noted subject and to refer to the telephonic discussions with the undersigned on 5.1.2011. Additional Solicitor General has informed the undersigned that the case is coming up for final hearing on 13.1.2011. It is conveyed that Counter Affidavit has not been filed in the WP No. 8215(W) of 2008 -Subhash Chandra Basu Vs. Union of India. During the hearing before the Ld. Court of Chief Justice on 19.11.2010 at 2.00 p.m., it was mentioned by the Advocate of the Petitioner that Counter Affidavit has not been filed in the aforesaid writ petition. The learned Additional Solicitor General appeared on behalf of Government of India and Ld. Court advised that Union Government should file the affidavit in this Writ Petition and the final hearing will take place on 13th January, 2011.

2. In this connection, I am further directed to convey that in the W.P. No.8215(W) of 2008 filed by Shri Subhash Chandra Basu & Ors Vs. Union of India, MHA, Principal Secretary of PM, Ministry of External Affairs and Ministry of Parliamentary Affairs have been made Respondents to this writ petition. The MHA had prepared the parawise comments and forwarded the same to Additional Government Counsel, Ministry of Law & Justice, Branch Sectt,

349 334 326

Kolkata on 2.4.2009 for preparing the affidavit. The draft affidavit has been received in this Ministry and the same has been modified and edited by this Ministry. Since PMO, Ministry of External Affairs and Ministry of Parliamentary Affairs have also been made Respondent to the writ petition, a copy of draft affidavit prepared by this Ministry has been forwarded to PMO, MEA and Ministry of Parliamentary Affairs for their comments on 15th December, 2010. The comments of PMO and Parliamentary Affairs have been received. The comments of PMO are as under:

Comments of PMO:

“PMO has no comments to offer and to request Home Ministry to file affidavit for Government of India, in consultation with the other Ministries concerned, after due vetting.”

Comments of Ministry of Parliamentary Affairs:

“The Ministry of Parliamentary Affairs is not concerned with the subject matter and have no comments to offer on the draft affidavit. The Ministry does not propose to file a separate affidavit. In view of the above, Ministry of Home Affairs is requested to get the name of Ministry of Parliamentary Affairs deleted from the list of Respondents.”

3. The comments of Ministry of External Affairs has not yet been received and that Ministry has already been reminded to expedite the comments. Till the comments of MEA is received, this Ministry is not in a position to forward the draft final affidavit to you for filing. It is, therefore, requested that extension of time may kindly be arranged to be sought for filing the Counter Affidavit.

4. With regard to W.P. No. 2003/2006 –Rudra Jyoti Bhattacharya & Ors Vs. Union of India & Ors., Supplementary Petition has been filed by one Shri Surojit Das Gupta. PMO and MHA have been made Respondents in this case. Since, MEA is also concerned with the subject matter and the Petitioner has

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not made MEA as a Respondent. Therefore, comments from PMO and MEA have been called for.

5. PMO has requested Ministry of Home Affairs may consult Ministry of External Affairs in the matter. MEA has so far not furnished their comments. MEA has been requested to furnish parawise comments on the above mentioned Supplementary Petition in order to prepare counter affidavit by MHA on behalf of MEA. MEA has been reminded at the higher official level.

6. With regard to W.P. No.27541 (W) of 2006 -Ashim Kumar Ganguly & Ors Vs. Union of India & Ors regarding Death of Netaji Subhash Chandra Bose, in this case also reply to supplementary affidavit is yet to be filed. Since MEA is concerned with the subject relating to alleged ashes staked in the Renkoji Temple at Japan, that Ministry have been requested to send their comments to enable this Ministry to file a counter affidavit on behalf of MEA which are still awaited.

7. In view of the above detailed position, it is requested that extension of time for filing the Counter Affidavit may please be arranged to be conveyed to the Ministry.

Shri Farooq M. Razak,
Additional Solicitor General,
19, Balu Hakak Lane,
Park Circus,
Kolkata-700017

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel.: 24617196



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Speed Ret 328
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No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3
Dated the 7th February, 2011,

To

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, Calcutta,
38/2 Lal Lajpat Rai Sarani,
Kolkata - 700 020

033 - 24 86 8070

Sub : Supplementary Affidavit to the W.P No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs UOI and Ors

Dear Madam,

A copy of the Supplementary Writ Petition No.27541(W) of 2006 - Shri Ashim Ganguly and Anr Vs UOI and Ors is enclosed. Netaji Research Bureau has been made a respondent (R-5) in the said case. Para 7(iii) of the Supplementary Writ Petition may kindly be perused wherein the Petitioners have prayed for refraining from incurring any amount for Netaji Research Bureau being the Respondent No.5 from Public Exchequer and to continue research for on any issue pertaining to Netaji in particular about the alleged death of Netaji Subash Chandra Bose and the ashes allegedly kept in the Renkoji temple of Japan. The Bureau may file a reply to the averments made in the para 7(iii) of the Supplementary Writ Petition indicating the position obtaining on the averment made about the research work on Netaji and any other relevant paras concerning them.

2. The Bureau may also comment whether they may like to file an independent Affidavit on their behalf in the Calcutta High Court.

3. The case is coming up for hearing on 24th February, 2011 in Calcutta High Court. It is requested that the comments may be furnished to this Ministry by return Fax.

Yours faithfully,

Encl: As above

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. Fax.24617196

- ii) A prayer for prohibiting the Respondent Central Government from incurring any amount from Public Exchequer for preservation and reservation and/or maintenance of Renkoji Temple in Japan allegedly keeping the ashes as that of Netaji Subhash Chandra Bose.
- iii) A prayer was made for refraining from incurring any amount for Netaji Research Bureau being the Respondent No. 5 from Public Exchequer and to continue Research work on any issue pertaining to Netaji in particular about the alleged death of Netaji Subhas Chandra Bose and the ashes ~~alleged~~ allegedly kept in the Renkoji Temple of Japan.
- iv) An order for restraining the respondent Central Government not to take any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple, Japan till the disposal of Writ Petition 27541 (W) of 2005.

8. The instant supplementary affidavit inevitably necessitated to affirm by the petitioners based on subsequent fact which has come like a bolt from the blue, that a Pune (Maharashtra) based Newspaper, the times News Network published

351
No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

By Speed Post
338

R+I to issue please

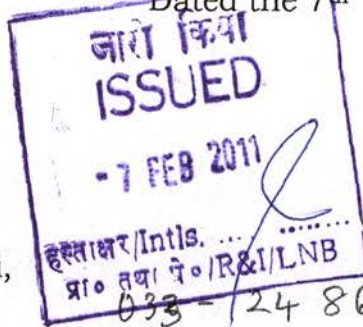
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7/2/2011.

To

Prof. Mrs. Krishna Bose,
Chairperson,
Netaji Research Bureau,
Netaji Bhawan, Calcutta,
38/2 Lal Lajpat Rai Sarani,
Kolkata - 700 020

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3
Dated the 7th February, 2011,



- 7 FEB 2011

Sub : Supplementary Affidavit to the W.P No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs UOI and Ors

Dear Madam,

A copy of the Supplementary Writ Petition No.27541(W) of 2006 - Shri Ashim Ganguly and Anr Vs UOI and Ors is enclosed. Netaji Research Bureau has been made a respondent (R-5) in the said case. Para 7(iii) of the Supplementary Writ Petition may kindly be perused wherein the Petitioners have prayed for refraining from incurring any amount for Netaji Research Bureau being the Respondent No.5 from Public Exchequer and to continue research for on any issue pertaining to Netaji in particular about the alleged death of Netaji Subash Chandra Bose and the ashes allegedly kept in the Renkoji temple of Japan. The Bureau may file a reply to the averments made in the para 7(iii) of the Supplementary Writ Petition indicating the position obtaining on the averment made about the research work on Netaji and any other relevant paras concerning them.

2. The Bureau may also comment whether they may like to file an independent Affidavit on their behalf in the Calcutta High Court.

3. The case is coming up for hearing on 24th February, 2011 in Calcutta High Court. It is requested that the comments may be furnished to this Ministry by return Fax.

Yours faithfully,

Encl: As above

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. Fax. 24617196

382

Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 11th February, 2011.

**Sub : Court Case filed in Kolkata High Court regarding the
alleged disappearance of Netaji Subhas Chandra Bose**

Ministry of External Affairs (East Asia Division) may please refer to their UO No.C/103/1/2010-JP dated 3rd September, 2010 on the above mentioned subject and to say that a Supplementary Affidavit has been filed to the Writ Petition No.27541(W) of 2006 by Shri Ashim Kumar Ganguly and others Vs Union of India. Para-7(i) & (ii) and Para 8 & 9 of this Supplementary Writ Petition concern Ministry of External Affairs. Copies of these paras are enclosed. It is requested that necessary comments may please be provided by return FAX for enabling this Ministry to file reply immediately.

Enclo : as above.

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. 24617196

Shri Sandeep Chakravorty,
Director(China/EA)
Ministry of External Affairs,
South Block, New Delhi.

MHA U.O. No.I/12014/12/07-Cdn

44 - 11/ ✓

Issued vide PB No 17/09

Ruchika

11/2/2011.

- b) He did not die in the plane crash as alleged;
- c) The ashes in the Japanese Temple are not of the Netaji;
- d) In absence of any clinching evidence a positive answer cannot be given and;
- e) Answer already given in (a) above.

The Photo copy of the conclusion submitted by Justice Wanoj Mukherjee(Retired) is annexed hereto and marked as Annexure- "P-2".

7. Your petitioner states that having received the report of Justice Wanoj Mukherjee (Retired) and based on the same a Writ Petition was filed before this Hon'ble Court in 2006 being W.P.NO. 2754(W) of 2006(Ashim Kumar Ganguly and Anr. Vs-Union of India and others). In the said writ petition the cardinal prayer was as follows:-

- 1) to issue a writ of mandamus upon the Central Government to refrain from spending further Public Money from the Government Exchanger for Maintain and upkeeping the Renkoji Temple of Japan and allegedly keeping the ashes therein as that of Netaji Subhas Chandra Bose ;

- 7 - 384 311 323
- ii) A prayer for prohibiting the Respondent Central Government from incurring any amount from Public Exchequer for preservation and reservation and/or maintenance of Renkoji Temple in Japan allegedly keeping the ashes as that of Netaji Subhash Chandra Bose.
- iii) A prayer was made for refraining from incurring any amount for Netaji Research Bureau being the Respondent No. 5 from Public Exchequer and to continue Research work on any issue pertaining to Netaji in particular about the alleged death of Netaji Subhas Chandra Bose and the ashes ~~alleged~~ allegedly kept in the Renkoji Temple of Japan.
- iv) An order for restraining the respondent Central Government not to take any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple, Japan till the disposal of Writ Petition 27541 (W) of 2005.

8. The instant supplementary affidavit inevitably necessitated to affirm by the petitioners based on subsequent fact which has come like a bolt from the blue, that a Pune (Maharashtra) based Newspaper, the times News Network published

that a city based World Peace Centre (WPC) would bring the ashes Netaji Subhash Chandra Bose which has received the clearance from the Union Government through Indo Japan Association and the ashes that are currently in Tokyo's Netaji Subhas Chandra Memorial will be handed over to the World Peace Centre by the next Independence day. The said Publication has been downloaded which is annexed hereto and marked as Annexure - "P-3".

Be it mentioned here that Netaji is not now confined to a particular region, or any family or any Governments or any organization and he has become the concerned for all. So any unilateral decision shall create serious consequences upon the public sentiment at large.

9. Your petitioner being the petitioner in the writ petition No.1805 of 1997, challenged any attempt about bringing back the alleged ashes kept in Japan as that of Netaji Subhash Chandra Bose and in the said writ petition the Hon'ble Court had given a categorical direction on the same score. A commission was also instituted, whereby it has been established that the ashes staked in Japan are not of Netaji Subhash Chandra Bose. Therefore, the question of bringing back and/or

- 8 - 386 243 335

preserving or staking ashes in Japan as that of Netaji

Subhas Chandra Bose by any agency either in India or elsewhere are violative of the Commission's report. The Central Government is therefore, has to come forward with its specific opinion about the report published in time's news Network at Pune (Maharashtra) as to ascertain the veracity of the said report and to bring the people of India into confidence thereto and to declare whether Central Government has given any clearance and/or assent and/or accredited either to the Pune based World Peace Centre or any other organization in India or elsewhere, to the effect as published in the Times News Network and also the said organization WPC (World Peace Centre) be declared banned by the Central Government.

2591

10. That your petitioner states and submits that the instant affidavit may please be treated as part and parcel of the writ petition No. 2754 of 2006 and heard analogously with the same.

12. That the statements made in paragraphs 1, 2, 3, 5, 6, 7, 8

...6

Message Confirmation Report

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**NETAJI RESEARCH BUREAU**

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS

NETAJI BHAWAN • CALCUTTA

BY FAX & SPEED POST

Prof. Mrs. Krishna Bose

Chairperson, Netaji Research Bureau

16th February 2011

Shri K. Muralidharan
Deputy Secretary to the Govt. of India
Ministry of Home Affairs
IS II Division
9th Floor, Lok Nayak Bhawan
Khan Market
New Delhi 110 003

Sub : Supplementary Affidavit to the W.P.No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs GOI and Ors

Dear Shri Muralidharan,

This is with reference to our telephone conversation yesterday 15th February 2011. I am enclosing a few lines on Netaji Research Bureau as you required. Netaji Research Bureau is a nationally and internationally known organization. Its activities are well known and much appreciated in all quarters. The persons who have filed the suit and the supplementary affidavit are only interested in the question of Netaji's Ashes. This is a national issue to be decided by the highest authorities in India.

Best regards,

Sincerely,

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson,
Netaji Research Bureau

Placed to the Council.

[Signature]
17/2/2011
W.C. (ind)



NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

Attention : Shri K. Muralidharan

NETAJI RESEARCH BUREAU

Netaji Research Bureau is a Registered Society formally registered under Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. A fifteen member Council carries on the management of the Bureau and looks after the Netaji Museum. The members of the Council are historians, political scientists, freedom fighters, social workers all distinguished persons in their own fields. For more than five decades the Bureau has been maintaining itself on its own resources e.g.: sale of publications, museum fees, public donations and occasional support from the Centre

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson, Netaji Research Bureau



NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

BY FAX & SPEED POST

12th February 2011

Shri K. Muralidharan
Deputy Secretary to the Govt. of India
Ministry of Home Affairs
IS II Division
9th Floor, Lok Nayak Bhawan
Khan Market
New Delhi 110 003

Sub : Supplementary Affidavit to the W.P No.27541(W) of 2006
Shri Ashim Ganguly and Arr Vs UOI and Ors

Dear Shri Muralidharan,

This is in response to your letter dated 7th February, 2011 regarding Para 7 (III) of the Supplementary Affidavit to the W.P. No. 27541(W) of 2006 of Shri Ashim Ganguly and Others. Following is what we have to say in the matter.

We reiterate that Netaji Research Bureau is an internationally known Institute of History, Politics and International relations established in 1957. Netaji Research Bureau has celebrated its Golden Jubilee anniversary in the year 2007-2008. Netaji Research Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. The Bureau has a very rich archives and a Life Museum which displays documents, photographs, films etc collected from all over the world for many decades by its Founder-Director Dr. Sisir Kumar Bose. The Museum and preserved rooms of Netaji are visited by hundreds of people throughout the year which include younger generations of Indians as also distinguished scholars, diplomats, Nobel Laureates from India and abroad. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has produced documentaries and audio cassettes on him. Eminent scholars from India and abroad regularly give lectures here on India's freedom movement as also on future development of the nation. The Bureau is run by a body of distinguished persons drawn from various walks of lives all over India.

In view of the prestigious history of the Bureau for decades we maintain that the statements made in Para 7(III) of the Supplementary Writ Petition is unfounded, baseless, irrelevant and to be rejected outright.

Yours faithfully,

Krishna Bose
Prof. Mrs. Krishna Bose
Chairperson
Netaji Research Bureau

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14/2/2011

38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

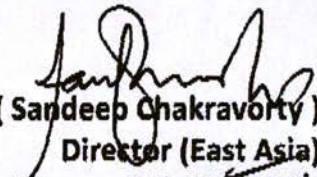
e-mail : nrb@cal.vsnl.net.in • website : <http://www.netaji.org>

**Ministry of External Affairs
(East Asia Division)**

Sub: Court case filed in Kolkata High Court regarding the alleged disappearance of Netaji Subhas Chandra Bose – Writ Petition No.27541(W) of 2006 by Shri Ashim Kumar Ganguly and others Vs Union of India.

-:0000:-

Reference MHA's U.O. No.I/12014/12/07-Cdn dated 11th February, 2011 on the above subject. As regards para-7(i) & (ii) no money from public funds are spent for maintenance of Renkoji Temple in Tokyo, Japan. As regards para 8 & 9, Ministry of External Affairs has not cleared any proposal for bringing the ashes of Netaji Subhas Chandra Bose back to India. Further, the Ministry of External Affairs is not in the knowledge of any such proposal which has been presented to our Embassy in Tokyo. The news item referred in para 8&9 are speculative.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

- 1) Shri K. Muralidharan, DS(IS-II), Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi (Fax: 2461 7196)

MEA U.O. No.25/4/NGO-VOI-XVII

14 February 2011

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NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

BY FAX & SPEED POST

Prof. Mrs. Krishna Bose

Chairperson, Netaji Research Bureau

16th February 2011

Shri K. Muralidharan
Deputy Secretary to the Govt. of India
Ministry of Home Affairs
IS II Division
9th Floor, Lok Nayak Bhawan
Khan Market
New Delhi 110 003

Sub : Supplementary Affidavit to the W.P.No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs GOI and Ors

Dear Shri Muralidharan,

This is with reference to our telephone conversation yesterday 15th February 2011. I am enclosing a few lines on Netaji Research Bureau as you required. Netaji Research Bureau is a nationally and internationally known organization. Its activities are well known and much appreciated in all quarters. The persons who have filed the suit and the supplementary affidavit are only interested in the question of Netaji's Ashes. This is a national issue to be decided by the highest authorities in India.

Best regards,

Sincerely,

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson,
Netaji Research Bureau

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38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

e-mail : nrb@cal.vsnl.net.in • website : <http://www.netaji.org>



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(3/2)

NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

Attention : Shri K. Muralidharan

NETAJI RESEARCH BUREAU

Netaji Research Bureau is a Registered Society formally registered under Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. A fifteen member Council carries on the management of the Bureau and looks after the Netaji Museum. The members of the Council are historians, political scientists, freedom fighters, social workers all distinguished persons in their own fields. For more than five decades the Bureau has been maintaining itself on its own resources e.g.: sale of publications, museum fees, public donations and occasional support from the Centre

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson, Netaji Research Bureau

38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

e-mail : nrb@cal.vsnl.net.in • website : <http://www.netaji.org>

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3/3
No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3
Dated the 18th February, 2011,

R+I to issue
please

Ruehica

28/2

To

Shri G.S. Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
11, Strand Road, Kolkata.

28 FEB 2011

**Sub: W.P No.27541(W) of 2006 Shri Ashim Ganguly and Anr Vs
UOI and Ors**

Sir,

I am to refer to Ministry of Law & Justice, Department of Legal Affairs' letter No. 1204/Home/06-III/2159/3601 dated 21.09.2010 and to forward herewith the parawise comments on the above mentioned writ petition for preparing Counter Affidavit and sending the same to this Ministry for vetting and filing in the High Court Kolkata.

Yours faithfully,

(K Muralidharan)

Deputy Secretary to the Govt. of India
Tel. 24617196

Copy to:

- P (i) Shri Farooq M. Razak, Additional Solicitor General Kolkata,
19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- Y (ii) Shri R.N. Das, Sr. Counsel High Court Kolkata.

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Para-wise comments of Ministry of Home Affairs on the supplementary affidavit filed by Shri Ashim Kumar Ganguly on writ petition No. 27541 of 2006 and others Vs. Union of India

1. Averments made in para-1 need no comments.
2. Averments made in para-2 need no comments.
3. Averments made in para-3 need no comments as these are matter of record.
4. With regard to averment made in Para 4, 5 and 6 of Writ Petition, it is a matter of record, however, following is again submitted for the sake of clarification:-
 - (A) On the question of alleged disappearance of Netaji Subhas Chandra Bose, the Government of India has, so far, appointed three Committees / Commissions so far. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.
 - (B) The second inquiry was made by appointing a one-man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974. This Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

- (C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order/judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose.
- (D) Therefore, the Government of India appointed a Commission headed by Justice (Retd.) M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith, including:-
- (a) whether Netaji Subhas Chandra Bose is dead or alive;
 - (b) if he is dead, whether he died in the plane crash, as alleged;
 - (c) whether the ashes in the Japanese temple are ashes of Netaji;
 - (d) whether he has died in any other manner at any other place and, if so, when and how;
 - (e) if he is alive, in respect of his whereabouts.

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(E) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

S.No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

“5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged”.

(F) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of

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“clinching evidence’. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

(G) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

“2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that:-

Netaji did not die in the plane crash; and

The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956”.

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(H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 6 months, it could not find any proof that Netaji Subhas Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/ findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to averment made in Para 7(i) & (ii) of Writ Petition, it is submitted that the Government of India is not spending money from public funds for maintenance of Renkoji Temple in Tokyo, Japan. 1,340/ u

6. With regard to averment made in Para 7 (iii) of the Supplementary Writ Petition, it is submitted that the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises,

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the ancestral home of Netaji. The Netaji Research Bureau an institute of History, Politics and international relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau. and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that the statements made in Para-7(iii) of Supplementary Writ Petition is rejected outright. P 337-38

7. With regard to averment made in Para 7 (iv) of Writ Petition it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokya does not arise.

8. With regard to the averment made in Paras 8 and 9 of the Supplementary Writ Petition, it has been conveyed by Ministry of External Affairs that regarding the news item which appeared in "Pune Times" on 18th August, 2010, Union of India has not approved any proposal for bringing the ashes of Netaji Subhas Chandra Bose back to India. Ministry of External Affairs has further conveyed that they are not in knowledge of any such proposal which has been presented to Indian Embassy in Tokyo and Ministry of External Affairs has also commented that the news items referred to in Paras 8 & 9 of the Supplementary Writ Petition are speculative.

9. Averment made in Para 10 and 11 need no comments.

SENDING REPORT

371

358 350

Feb. 25 2011 03:00AM

YOUR LOGO : DS(S)MHA
YOUR FAX NO. : 01124617196

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	<FAX # NOT AVAIL.>	Feb.25 02:58AM	02'04	SND	07	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
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372
359 351
No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs

IS II Division

R + I to issue please

Ruehica

By Speed Post

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3
Dated the 28th February, 2011,

To

Shri Shakeel Mohammed Akhter,
Advocate, Calcutta High Court
25, Serang Lane, 1st Floor
Kolkata - 700014

- 1 MAR 2011

Sir,

A copy of the Justice Mukherjee Commission of Inquiry
(3 volumes) is enclosed herewith, as desired.

Yours faithfully,

L P Shrivastava

Enclo : As above.

(Smt L P Shrivastava)
Under Secretary to the Govt. of India
Tel. No.2461-0467





NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

BY FAX & SPEED POST

12th February 2011

Shri K. Muralidharan
Deputy Secretary to the Govt. of India
Ministry of Home Affairs
IS II Division
9th Floor, Lok Nayak Bhawan
Khan Market
New Delhi 110 003

Sub : Supplementary Affidavit to the W.P No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs UOI and Ors

Dear Shri Muralidharan,

This is in response to your letter dated 7th February, 2011 regarding Para 7 (III) of the Supplementary Affidavit to the W.P. No. 27541(W) of 2006 of Shri Ashim Ganguly and Others. Following is what we have to say in the matter.

We reiterate that Netaji Research Bureau is an internationally known Institute of History, Politics and International relations established in 1957. Netaji Research Bureau has celebrated its Golden Jubilee anniversary in the year 2007-2008. Netaji Research Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. The Bureau has a very rich archives and a Life Museum which displays documents, photographs, films etc collected from all over the world for many decades by its Founder-Director Dr. Sisir Kumar Bose. The Museum and preserved rooms of Netaji are visited by hundreds of people throughout the year which include younger generations of Indians as also distinguished scholars, diplomats, Nobel Laureates from India and abroad. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has produced documentaries and audio cassettes on him. Eminent scholars from India and abroad regularly give lectures here on India's freedom movement as also on future development of the nation. The Bureau is run by a body of distinguished persons drawn from various walks of lives all over India.

In view of the prestigious history of the Bureau for decades we maintain that the statements made in Para 7(III) of the Supplementary Writ Petition is unfounded, baseless, irrelevant and to be rejected outright.

Yours faithfully,

~ Krishna Bose
Prof. Mrs. Krishna Bose
Chairperson
Netaji Research Bureau

38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

e-mail : nrb@cal.vsnl.net.in • website : http://www.netaji.org

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14/2 sol call

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361/383

**Ministry of External Affairs
(East Asia Division)**

Sub: Court case filed in Kolkata High Court regarding the alleged disappearance of Netaji Subhas Chandra Bose – Writ Petition No.27541(W) of 2006 by Shri Ashim Kumar Ganguly and others Vs Union of India.

~:00000:-

Reference MHA's U.O. No.1/12014/12/07-Cdn dated 11th February, 2011 on the above subject. As regards para-7(i) & (ii) no money from public funds are spent for maintenance of Renkoji Temple in Tokyo, Japan. As regards para 8 & 9, Ministry of External Affairs has not cleared any proposal for bringing the ashes of Netaji Subhas Chandra Bose back to India. Further, the Ministry of External Affairs is not in the knowledge of any such proposal which has been presented to our Embassy in Tokyo. The news item referred in para 8&9 are speculative.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

- 1) Shri K. Muralidharan, DS(IS-II), Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi (Fax: 2461 7196)

MEA U.O. No.25/4/NGO-VOI-XVII

14 February 2011

210/4/NGO-VOI-XVII
2/2/2011

P. put up.

12/2/2011

US(GW)

875
No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3
Dated the 18th February, 2011,

21 FEB 2011

Ruchica

21/2/2011
To

Shri G.S. Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
11, Strand Road, Kolkata.

Tel. No. 033-22484806

Sub: **W.P No.27541(W) of 2006 Shri Ashim Ganguly and Anr Vs
UOI and Ors**

Sir,

I am to refer to Ministry of Law & Justice, Department of Legal Affairs' letter No. 1204/Home/06-III/2159/3601 dated 21.09.2010 and to forward herewith the parawise comments on the above mentioned writ petition for preparing Counter Affidavit and sending the same to this Ministry for vetting and filing in the High Court Kolkata.



Yours faithfully,

(K Muralidharan)

Deputy Secretary to the Govt. of India

Tel. 24617196

Copy to:

(i) Shri Farooq M. Razak, Additional Solicitor General Kolkata,
19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.

(ii) Shri R.N. Das, Sr. Counsel High Court Kolkata.

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Para-wise comments of Ministry of Home Affairs on the supplementary affidavit filed by Shri Ashim Kumar Ganguly on writ petition No. 27541 of 2006 and others Vs. Union of India

1. Averments made in para-1 need no comments.
2. Averments made in para-2 need no comments.
3. Averments made in para-3 need no comments as these are matter of record.
4. With regard to averment made in Para 4, 5 and 6 of Writ Petition, it is a matter of record, however, following is again submitted for the sake of clarification:-
 - (A) On the question of alleged disappearance of Netaji Subhas Chandra Bose, the Government of India has, so far, appointed three Committees / Commissions so far. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.
 - (B) The second inquiry was made by appointing a one-man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974. This Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

- (C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order/ judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose.
- (D) Therefore, the Government of India appointed a Commission headed by Justice (Retd.) M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith, including:-
- (a) whether Netaji Subhas Chandra Bose is dead or alive;
 - (b) if he is dead, whether he died in the plane crash, as alleged;
 - (c) whether the ashes in the Japanese temple are ashes of Netaji;
 - (d) whether he has died in any other manner at any other place and, if so, when and how;
 - (e) if he is alive, in respect of his whereabouts.

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(E) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

S.No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

“5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged”.

(F) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of

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“clinching evidence’. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

(G) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

“2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that:-

Netaji did not die in the plane crash; and

The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956”.

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(H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 6 months, it could not find any proof that Netaji Subhas Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/ findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to averment made in Para 7(i) & (ii) of Writ Petition, it is submitted that the Government of India is not spending money from public funds for maintenance of Renkoji Temple in Tokyo, Japan.

6. With regard to averment made in Para 7 (iii) of the Supplementary Writ Petition, it is submitted that the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises,

the ancestral home of Netaji. The Netaji Research Bureau an institute of History, Politics and international relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau. and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that the statements made in Para-7(iii) of Supplementary Writ Petition is rejected outright.

7. With regard to averment made in Para 7 (iv) of Writ Petition it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokya does not arise.

8. With regard to the averment made in Paras 8 and 9 of the Supplementary Writ Petition, it has been conveyed by Ministry of External Affairs that regarding the news item which appeared in "Pune Times" on 18th August, 2010, Union of India has not approved any proposal for bringing the ashes of Netaji Subhas Chandra Bose back to India. Ministry of External Affairs has further conveyed that they are not in knowledge of any such proposal which has been presented to Indian Embassy in Tokyo and Ministry of External Affairs has also commented that the news items referred to in Paras 8 & 9 of the Supplementary Writ Petition are speculative.

9. Averment made in Para 10 and 11 need no comments.



NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

BY FAX & SPEED POST

Prof. Mrs. Krishna Bose

Chairperson, Netaji Research Bureau

16th February 2011

Shri K. Muralidharan
Deputy Secretary to the Govt. of India
Ministry of Home Affairs
IS II Division
9th Floor, Lok Nayak Bhawan
Khan Market
New Delhi 110 003

Sub : Supplementary Affidavit to the W.P.No.27541(W) of 2006
Shri Ashim Ganguly and Anr Vs GOI and Ors

Dear Shri Muralidharan,

This is with reference to our telephone conversation yesterday 15th February 2011. I am enclosing a few lines on Netaji Research Bureau as you required. Netaji Research Bureau is a nationally and internationally known organization. Its activities are well known and much appreciated in all quarters. The persons who have filed the suit and the supplementary affidavit are only interested in the question of Netaji's Ashes. This is a national issue to be decided by the highest authorities in India.

Best regards,

Sincerely,

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson,
Netaji Research Bureau

M. put up

2/11/11
usc/ash

38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

e-mail : nrb@cal.vsnl.net.in • website : <http://www.netaji.org>



NETAJI RESEARCH BUREAU

AN INSTITUTE OF HISTORY, POLITICS AND INTERNATIONAL RELATIONS
NETAJI BHAWAN • CALCUTTA

Attention : Shri K. Muralidharan

NETAJI RESEARCH BUREAU

Netaji Research Bureau is a Registered Society formally registered under Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. A fifteen member Council carries on the management of the Bureau and looks after the Netaji Museum. The members of the Council are historians, political scientists, freedom fighters, social workers all distinguished persons in their own fields. For more than five decades the Bureau has been maintaining itself on its own resources e.g.: sale of publications, museum fees, public donations and occasional support from the Centre

Krishna Bose

Prof. Mrs. Krishna Bose
Chairperson, Netaji Research Bureau

38/2, Lala Lajpat Rai Sarani, Kolkata - 700 020

Telephone : 2486-8139/4003-4564, Fax : 91-33-24868070, Telegrams : Suvasbos, Calcutta

e-mail : nrb@cal.vsnl.net.in • website : <http://www.netaji.org>

[Shri Vasant Sathe]

I find sometimes a contradiction in our behaviour. Statues or portraits are normally unveiled of only those who are no more with us. It is very seldom, except in the South, that a statue is unveiled of a person who is still alive. Normally it is not done. In the present case, on the one hand, we have unveiled the statues and portraits; on the other hand, we are maintaining that he is still alive. I think there is some contradiction which needs reconciliation.

If, for any reason, it is felt that the recommendation or report of the Commission is wrong, throw it out and have another fresh enquiry. In all seriousness, I would submit to Morarji that the only authority on this subject, who can go into it, who can really go to the areas where there is a likelihood of finding Subhas Chandra Bose is Prof. Samar Guha. He has photographs with him. I think, there should be a one-man Commission I am saying it in all humility and seriousness and that should be headed by Prof. Samar Guha. He can take all the assistance, the entire Government machinery can be placed at his disposal and he might even take the assistance of your scientific astrologer. There is substance in astrology and may be that it would help. But if any one can find Netaji Subhas Chandra Bose for us and if on any one's behalf supposing Netaji has taken *sanyas*, as the Astrologer says, and even then if any one can persuade him to come even in *sanyas* at least to give *darshan* to his people, it is only Prof. Samar Guha and nobody else. He has such a devotion and completed identification that you cannot find in anyone else. I would request the hon. Prime Minister, Shri Morarji Desai to appoint a one-man Commission headed by Prof. Samar Guha, give him all the assistance than one can think of. Let him try his best to bring Subhas Chandra Bose to this land.

THE PRIME MINISTER (SHRI MORARJI DESAI): Mr. Chairman, Sir, I may differ sometimes from hon. friend, Mr. Samar Guha, but I can never doubt, even in my sleep, his sincerity. I have great admiration for the dedication with which he is pursuing this cause and yet we have to be realistic in this matter.

There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee of enquiry headed by Shri G. D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed. Some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive. At the same time, Government feels that no useful purpose would be served by having any further inquiry. I hope that in the light of this statement, my hon. friend will withdraw his motion.

PROF. SAMAR GUHA (Contd.): Sir, Today is a great day for the whole Indian people, because a mortal sin, a treacherous crime that was committed against the epic hero of India, freedom has been undone. If I say that Netaji was given burial, out of political conspiracy, it would not be an exaggeration. Although there was not an iota of doubt or any positive proof to the contrary that the plane crash was nothing but fake, and the alleged crash did not involve Netaji.

I congratulate the Prime Minister on behalf of the Indian people, the Government as well, for the very bold and courageous steps and the decision that they have taken today. It is not an easy matter to undo the findings of the two Inquiries.

I also congratulate the representatives of all the parties in this House, all of whom, about 25 of them, who spoke in this House on earlier occasions on this resolution and who lent their unanimous support to the demand to undo the Khosla Commission's Report.

I would also remind this House that earlier about 400 members of both the Houses, this House and the other House, had in a joint memorandum urged upon the Government for a fresh inquiry on Netaji on the basis of which the Khosla Commission was set up.

It is a matter of extreme regret that it required three decades for our nation to undo, I would say, the mischief that was done against the revolutionary pilgrime of India. Would there have been the freedom, as you call it, would the British imperialists have quit India so precipitously being the victor of the last War if there had not been a fatal blow by Netaji Subhas Chandra Bose? What now I would say is not my word, but is the word of Lord Attlee who, as a private citizen, came to India. It has been quoted by Shri R. C. Mazumdar in his book, "History of Indian Independence". He was asked "Why did the British quit India so precipitously?". Lord Attlee said: "Because of the activities of Netaji Subhas Chandra Bose".

It is now the accepted fact of history that Mahatma Gandhi prepared the background of Indian freedom and it is Netaji Subhas Chandra Bose who achieved it. But not the freedom as you find today. It is not the freedom of either of the dream of Mahatma Gandhi or Netaji Subhas Chandra Bose.

I am not angry like Mr. D. Dranath Basu or anybody for finding the name of Netaji in *Doordarshan* on the 15th August. I am very glad that they mention the name of Netaji on 15th August because anybody the real meaning of the Independence that we achieved on the 15th would not mind it. At least, I attend any function nowhere for even a day on the 15th August may be, personally, to me, it is of national betrayal. I remember Mahatma Gandhi, remained at Balighata, at the mid-night, August and he did not bless, even send a message of congratulations on this kind of Independence that we achieved. Therefore not at all worried about it. I think his name was not mentioned on the 15th August because he should be mentioned either January or 21st October, the day which Netaji declared the Provisional Government of India and the war of Indian liberation against British imperialists.

Today, I express my gratitude to Prime Minister because today's crusade that in my humble way trying to conduct on behalf of people of India at least to officially and legally Netaji declared dead. How, by the findings of the two Reports, this much we have achieved today, Netaji is neither legally nor officially dead.

What happened to him? There will be any useful served by having a fresh enquiry not is a question which I will later. But I want to draw attention of the Prime Minister that what has been done by Government has been done by himself. He himself republished his own findings in a recent Calcutta. There was the re-Khosla Commission and, the publication of this published a book called 'Days of Netaji'. This is

385

No. 12014/6/2008 - Cdn.
Govt. of India / Ministry of Home Affairs
IS-II Division

378 3/4

c/o : Office of
Additional Solicitor General,
(Sh. Farooq M. Razak)
Kolkata,
19, Balu Hakkak Lane
Park Circus,
Kolkata - 700 017
Dated : 23/2/2011

To
Ms. S. Bhattacharya,
Jt. Secretary & Legal Adviser,
Ministry of Law & Justice,
Deptt. of Legal Affairs, Branch Secy.
11, Strand Road, Kolkata - 700001

Subject: W.P. No 8215 (W)/08 filed by Sh. Subash Chandra Basu
& others.

Madam,

I am directed to say that the three writ petitions on the disappearance of Netaji Subash Chandra Bose and bringing back the ashes kept in Renkaji Temple, including the above mentioned writ petition are to be heard in The Hon'ble High Court on 24th Feb. 2011, the date specifically fixed for the purpose. The Counter Affidavit in the above said petition was finalized by Sh. Tarun Kumar Ghosh, CGSC. During the conference with ASG in the evening of 22nd Feb. 11, he was not available and was given to understand that he is no more on the panel of govt. counsels. It is therefore requested that another govt. counsel be appointed immediately to represent UOI in the matter and this Ministry may be informed immediately under intimation to Ld. ASG (Sh. Razak) Kolkata.

Yours Faithfully,

h. p. shrivastava
23/2/11

(Sd/- H. P. Shrivastava)
Under Secretary to Govt. of India

Copy to : Shri Farooq M. Razak, ASG, Kolkata,
19, Balu Hakkak Lane, Park Circus, Kolkata 700001.

386

373

Ministry of Home Affairs
(Internal Security.II Division)

--

There are 3 writ petitions pending for official hearing in the Kolkata High Court (Nos.2003/2006, 8215/2008. 27541/2006) relating to Netaji Subhash Chandra Bose. Addl. Solicitor General informed the undersigned that the hearing of the case is scheduled to take place on 24th Feb., 2011. Two Supplementary Affidavits and one Counter Affidavit is ready for affirmation after obtaining the comments of Ministry of External Affairs, Ministry of Parliamentary Affairs, Netaji Research Bureau and Prime Minister's Office.

2. Since the affidavits have to be affirmed before 24th February, 2011, it is proposed that Smt. L.P. Shrivastava, Under Secretary dealing with the subject matter be deputed for conference with Addl. Solicitor General at Kolkata and affirming the affidavits in Kolkata High Court. ASG desired that the officer may reach Kolkata on 22nd February, 2011 and attend the hearing also on 24th February, 2011.

3. For approval.

(K. Muralidharan)
Deputy Secretary (S)
21.02.2011

JS(IS.II) - on tour abroad.

Secretary (IS)

DS(S)

Amal

Amal 21/2

Amal 21/2

21/2
to (cd-2)

227
No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

374 3/6
Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 7th March, 2011.

Office Memorandum

Sub : Calcutta High Court - Discussions on 3 Writ Petition
Nos.2003/2006, 27541/2006 & 8251/2008 on the
disappearance of Netaji Subhas Chandra Bose.

I am directed to say that the three Writ Petitions on the above mentioned subject were heard in the Calcutta High Court on 24th February, 2011. The learned Court also heard the Report of the Justice Mukherjee Commission of Inquiry (JMCI) that was laid on the table of the house on 17th May, 2006. In para-2.10.2 of the Report of the JMCI, (copy of page 38 of the Report enclosed), it has been mentioned that deponents and their Counsels were to make their submissions on the issues before the Commission in response thereto..... Shri Tarakeswar Pal, the learned Counsel appearing for Government of India and deponents..... made their respective submissions in details. This Ministry has not been able to find any record to confirm that if at any given point of time Shri Tarakeswar Pal was appointed as the Govt. of India Counsel to make its submissions before the JMCI.

2. An Affidavit has to be filed before the Hon'ble Court, Kolkata immediately as to whether Union of India appointed Shri Tarakeswar Pal as the Government Counsel to represent Government of India before the Commission. Since Ministry of Home Affairs has so far not been able to trace any record to show that Ministry had appointed Shri Tarakeswar Pal to represent Government of India, the Ministry of Law and Justice is requested to check its record and inform this Ministry by 16th March, 2011 if they have any papers on the appointment of Shri Tarakeswar Pal as Government Counsel to represent Union of India before the JMCI.

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. 24617196

Shri M A Khan Yusufi,
Joint Secretary & Law Adviser
Ministry of Law & Justice
Shastri Bhawan,
New Delhi.

Issued vide

PB

1/2011

Ruchica

8/3/2011.

2.10.2 Keeping in view the above yardstick relating to reception of evidence in this inquiry, the deponents and/or their Counsel were asked to make their submissions on the issues (the terms of reference) before the Commission. In response thereto Ms. Chandreyee Alam, Shri Keshab Bhattacharjee, Shri Rudrajyoti Bhattacharjee, Shri Supriyo Bose, the learned Counsel appearing for some of the deponents, Shri Tarakeswar Pal, - the learned Counsel appearing for Government of India and deponents Dr. Madhusudan Pal, Professor Nandalal Chakrabarti, Dr. Susanta Mitra, Shri Kanailal Basu, Dr. Bijoy Ketan Mukherjee, Shri Sukhendu Kumar Baur, Shri Subhas Ranjan Dasgupta and Shri Satyabrata Tapadar made their respective submissions in detail. Some of them have filed written arguments also to supplement their oral submissions.

Consequent upon the conclusion of the arguments the findings on the terms of reference are to be recorded and it will be apposite to record the same at appropriate stages.

390

577 361

By Speed Post.

No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 4th March, 2011.

- 8 MAR 2011

R+I to issue release

पुलिस जारी किया
ISSUED

8/3/2011

To

हस्ताक्षर/Intls.
नो. तथा नं०/R&I/LNB

Additional Govt. Advocate
Ministry of Law and Justice,
Deptt. of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd Floor,
Kolkata - 700 001

Sub : Calcutta High Court - Discussions on 3 Writ Petition
Nos.2003/2006, 27541/2006 & 8251/2008 on the
disappearance of Netaji Subhas Chandra Bose.

I am directed to say that the three Writ Petitions on the above mentioned subject were heard in the Calcutta High Court on 24th February, 2011. The learned Court also heard the Report of the Justice Mukherjee Commission of Inquiry (JMCI) that was laid on the table of the house on 17th May, 2006. In para-2.10.2 of the Report of the JMCI, (copy of page 38 of the Report enclosed), it has been mentioned that deponents and their Counsels were to make their submissions on the issues before the Commission in response thereto..... Shri Tarakeswar Pal, the learned Counsel appearing for Government of India and deponents..... made their respective submissions in details. This Ministry has not been able to find any record to confirm that if at any given point of time Shri Tarakeswar Pal was appointed as the Govt. of India Counsel to make its submissions before the JMCI.

2. An Affidavit has to be filed before the Hon'ble Court, Kolkata immediately as to whether Union of India appointed Shri Tarakeswar Pal as the Government Counsel to represent Government of India before the Commission. Since Ministry of Home Affairs has so far not been able to trace any record to show that Ministry had appointed Shri Tarakeswar Pal to represent Government of India, the Ministry of Law and Justice, Branch Secretariat, Kolkata is requested to check its record and inform this Ministry by 16th March, 2011 if they have any papers on the appointment of Shri Tarakeswar Pal as Government Counsel to represent Union of India before the JMCI.

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. 24617196

2.10.2 Keeping in view the above yardstick relating to reception of evidence in this inquiry, the deponents and/or their Counsel were asked to make their submissions on the issues (the terms of reference) before the Commission. In response thereto Ms. Chandreyee Alam, Shri Keshab Bhattacharjee, Shri Rudrajyoti Bhattacharjee, Shri Supriyo Bose, the learned Counsel appearing for some of the deponents, Shri Tarakeswar Pal, - the learned Counsel appearing for Government of India and deponents Dr. Madhusudan Pal, Professor Nandalal Chakrabarti, Dr. Susanta Mitra, Shri Kanailal Basu, Dr. Bijoy Ketan Mukherjee, Shri Sukhendu Kumar Baur, Shri Subhas Ranjan Dasgupta and Shri Satyabrata Tapadar made their respective submissions in detail. Some of them have filed written arguments also to supplement their oral submissions.

Consequent upon the conclusion of the arguments the findings on the terms of reference are to be recorded and it will be apposite to record the same at appropriate stages.

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280 (372)
By Speed Post
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F.A. No. 3015750
3017763

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & C.A.
Department of Legal Affairs,
Branch Secretariat
4, KIRAN SHANKAR ROY ROAD,
2nd Floor, Calcutta-70001
Phone Nos: 2486515/2489625.

No. 152/LC/2000/

To
Sri V.P. Bhatia
Under Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.

Dated: 7.11.

2000

Sub: Engagement of a Counsel to represent the
Ministry of Home Affairs before Hon'ble
Mr. Justice Mukherjee Commission of Inquiry
which is enquiring into the alleged
disappearance of Netaji Subhas Chandra Bose

Ref: Your letter No. L.12014/24/2000-IS(D. III)
dt. 3rd. Nov. 2000.

Sir,

Please note that Sri TARAKESWAR PAL Sr. Advocate, High Court, Calcutta
Bar Association Room No. 5, High Court Building Calcutta Ph: 248-3190
FAX No. (033) 248-2313.

He has been engaged in the above matter to appear and plead on behalf of
the Department at the existing terms of the Central/State Government
Panel.

You are therefore requested to contact the Learned Counsel with
all relevant papers and files for preparation of the case on behalf of
the Department.

A copy of the engagement letter annexed hereto may please be made
over to the Learned Counsel.

~~All papers sent to this office are returned.~~

Encl: As above.

Yours faithfully,

(H.D. RATHOD.)

Senior Central Government Advocate & Incharge.

Copy to SRI Tarakeswar Pal, Sr. Advocate, "PURNASASI" 33, Ashoke Avenue
Near Navanir, Calcutta-700 040 PH. 471-0592(R)

He is requested to conduct the case on behalf of the Department,
as per the Departmental instructions. All Fee Bills may be submitted
to the Department directly for payment as per approved scheduled rates.

(H. D. RATHOD.)

S. no. 3 894

381 313

Most Immediate

By FAX and Speed Post
No.I.12014/24/2000-IS(D.III)

Dated, the 8th Nov., 2000.

To : Shri Tarakeswar Pal, Sr. Advocate,
"PURNASASI" 33, Ashoke Avenue,
Near Navanir, Calcutta-700 040.
FAX No.033-2482313.

Added to file


Subject: **Engagement of a Counsel to represent the Ministry of Home Affairs before Hon'ble Mr. Justice Mukherjee Commission of Inquiry which is inquiring into the alleged disappearance of Netaji Subhas Chandra Bose.**

Sir,

I am directed to refer to the Ministry of Law, Justice and CA (Department of Legal Affairs), Branch Secretariat, Calcutta, letter No.152/LC/2000 dated the 7th November, 2000 addressed to this Ministry with a copy endorsed to you on the above subject and to say that you have been engaged to appear and plead on behalf of the Ministry of Home Affairs at the existing terms of the Central/State Government Panel before the Justice Mukherjee Commission of Inquiry. A representative of this Ministry will be shortly meeting you at Calcutta to brief you in the matter with relevant papers/documents. You are, however, requested to let this Ministry know the details of documents etc. required by you so that the same could be made available through this Ministry's representative.

2. The next hearing of the Commission is to be held on 23.11.2000 at Calcutta and your reply in the matter is therefore immediately needed so that you can make an effective appearance before it. The same may be sent at FAX No.3015750 or 3017763.

Yours faithfully,


(V.P. BHATIA)

Under Secretary to the Government of India.

9/1

Contd.2/--

8/11

R+I to issue
By Speed Post
Ruchica
28/4.

395
No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

382 374
9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3,
Dated the 27th April, 2011,

To

Shri G.S. Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
11, Strand Road, Kolkata.

29 APR 2011

Sub: Supplementary W.P No.27541(W) of 2006 Shri Ashim Ganguly and Anr Vs UOI and Ors

Sir,

I am to refer to this Ministry's letter of even number dated 18.2.2011 forwarding therewith the para-wise comments on the above mentioned Supplementary Writ Petition for preparing Counter Affidavit and sending the same to this Ministry for vetting and filing in the High Court of Kolkata. The counter affidavit is still awaited from your side. It is requested to send the same for taking further necessary action.

Yours faithfully,

(K Muralidharan)

Deputy Secretary to the Govt. of India

Tel. 24617196

29 APR 2011

Copy to:

(i) Shri Farooq M. Razak, Additional Solicitor General Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.

(ii) Shri Shakeel Mohammed Akhter, Advocate, Central Govt. Standing Counsel, Govt. of India, High Court Calcutta, C/O Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.



Counter affidavit in Ashim Kumar Ganguly's case

283 375

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806/2011/4
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05-2011

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Shakeel Akhter

[Add to contacts](#)

To: kozimurali@hotmail.com

From: **Shakeel Akhter** (shakeel.advo@gmail.com)

Sent: 03 May 2011 16:10PM

To: kozimurali@hotmail.com

Always show content from shakeel.advo@gmail.com

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1 attachment (66.5 KB)



Affidavit...doc

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Dear Sir,

I have recived a communication from the Law Ministry referring to your letter in the above subject.

With reference thereto please note that I have not been entrusted to act as Advocate-on-record in the above matter.

Please appreciate that inasmuch as I have been entrusted to act as Advocate-on-record in the writ petition made by Sri Chandra Basu with Mr. Somenath Bose, Senior CGC, as per your parawise comments and under instructions from Mr. Bose the counter affidavit to Ashim Ganguly's writ petition has been prepared but could not be sent because of non-regularisation of my appointment as Advocate-on-record in the above matter. I have come to know that the original Advocate-on-record has since expiry of panel been not available for anything, no one has been acting in the matter with Mr. Bose as Advocate-on-record requiring engagement of new Advocate-on-record. However, I send herewith the counter affidavit in Ashim Ganguly's matter under instructions from Mr. Bose, of whom I am the chamber junior.

Since I am acting as Advocate-on-record in other similar matter you may now formally take up the issue of my engagement as Advocate-on-record in Ashim Ganguly's matter with the Kolkata Branch Secretariat of the Law Ministry at the earliest.

Since you are already out of time please verify, vet and return the approved draft by email for final preparation thereof at my end subject to my engagement in the matter. The soon you would complete the above course the counter affidavit may be affirmed in Calcutta like the other matter at your cost.

B. put up your.

615

41
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solcndy

11/5/2011

5/5/2011

Hotmail - kozimurali@hotmail.com - ...

Thanking you.

Yours faithfully,

Shahid Akhter,
Advocate.

397

384 376 276

5/5/2011

Hotmail - kozimurali@hotmail.com - ...

Thanking you.

398

Yours faithfully,

Shakeel Mohammed Akhter,
Advocate.

389 8 385 37 3

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W. P. No. 27541 (W) of 2006

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India;

And

IN THE MATTER OF:

Ashim Kumar Ganguly & Anr.

...Petitioners

-Versus-

Union of India & Ors.

Supplementary

....Respondents

AFFIDAVIT-IN-OPPOSITION OF THE RESPONDENTS TO THE WRIT
PETITION IN THE ABOVE MATTER

I, Lalit Prabha Srivastava, aged about 58 years, wife of Sri Dinesh Kumar Srivastava, working for gains at Lok Nayak Bhawan, Khan Market, New Delhi-110003 do hereby solemnly affirm and say as follows:-

1. I am the Under Secretary to the Government of India in the Ministry of Home Affairs and have made myself acquainted with the facts and circumstances of the above case and am authorised and competent to affirm this affidavit on behalf of the respondents abovenamed.

2. I have read the copy of the writ petition in the above matter verified by an affidavit of Sri Subhas Chandra Basu affirmed on 15.12.2006, for short, "the said petition" and have understood the purport, meaning and scope thereof.

3. Save what would appear from records and save what have been specifically admitted hereinbelow, I deny and dispute all content of

4/19

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram and Arunachal Pradesh)

IMPHAL BENCH

Counter Affidavit

(On behalf of Union of India / Respondent – 4)

Writ Petition (Crl.) No. 6 of 2011

Shri W. Jugindro Metei

Petitioner

Versus

Union of India and others

Respondents

Affidavit of Smt. L. P. Shrivastava aged about 58 years, W/o Shri D. K. Shrivastava, working as Under Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.

Deponent

I, the deponent abovenamed, do hereby solemnly affirm and state on oath as under.

1. That the deponent is Under Secretary, Ministry of Home Affairs, Government of India, New Delhi and is authorised to depose this affidavit on behalf of Respondent no. 4 and that the deponent in her official capacity is fully conversant with the facts deposed below.

2. That the petition filed by Shri W. Jugindro Metei, the detainee, who has been detained under NSA, 1980 has been read over by the deponent, who has understood the contents thereof and submitting reply as under.

1 (as per detention order, name of detainee is Shri Meisnam Jugindro Singh @Tomal)

401 286 378

contained in the said opposition as if the same have been dealt with categorically and denied in seriatim.

4. Before advertng to the controversy purported to be put forth in the said petition I would ²make the following preliminary submissions:-

- i. The said petition is not maintainable in fact and in law.
- ii. The said petition does not disclose any cause of action against the answering respondents.
- iii. The said petition is barred by the provisions of Article 122 of the Constitution of India.
- iv. The petitioners have no plausible stake in the subject matter of the purported dispute and have proceeded to move the said petition for publicity with hidden political agenda.
- v. The Central Government has taken action on the report of Justice Manoj Mukherjee Commission and placed the same along with the report of the Commission in the table of both the Houses of Parliament in accordance with the requirements of the Commission of Inquiry Act, 1954.

5. Now I proceed to deal with the allegations and/or contentions contained in various paragraphs of the said petition.

6. The statements made in paragraph 1 of the said petition are within the special knowledge of the petitioners, I, however, do not make any admission with regard thereto and put the petitioners to the strict proof thereof.

7. Save what would appear from record and save what have been specifically admitted herein I deny and dispute the statements made in paragraphs 2 and 3 of the said petition. It is categorically denied that the

Draft

1

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram and Arunachal Pradesh)

IMPHAL BENCH

Counter Affidavit

(On behalf of Union of India / Respondent – 1)

Writ Petition (Crl.) No. 52 of 2011

55

Smt. M, Kolabati Devi

Petitioner

Versus

Union of India and others

Respondents

Affidavit of Smt. L. P. Shrivastava, aged about 58 years, W/o
Shri D. K. Shrivastava, working as Under Secretary, Ministry of
Home Affairs, Government of India, North Block, New Delhi.

I, the above named deponent, do hereby solemnly affirm and state on
oath as under.

1. That the deponent is Under Secretary, Ministry of Home Affairs,
Government of India, New Delhi, and is authorised to depose this affidavit on
behalf of Respondent no. 1 and that the deponent in her official capacity is fully
conversant with the facts deposed below.

2. That the petition filed by Smt. M. Kolabati Devi, wife of the detainee,
Shri Potshangbam Opendro Singh alias Open alias Pukchao, who has been
detained under NSA, 1980, has been read over by the deponent, who has
understood the contents thereof and submitting reply as under.

3. That the contents of para 15, 20 and grounds b) & h) of para 21 of the
petition concern Respondent no. 1 i.e. the Union of India. Rest of the

allegations are made against other Respondents and as such no reply is being
given for these in this affidavit. ^{Further} The contents of ⁷⁰⁹ para grounds (e) and (f)

Government of India has, at any point of time, shown any apathetic, indifferent or derogatory attitude towards the world famous hero like Netaji Subhas Chandra Bose as alleged in the said paragraphs or at all. It is also categorically denied that the insurmountable personality, sky-kissing popularity and in-built quality of high ideals of like Netaji Subhas Chandra Bose was never assessed and/or properly honoured by the Government of India and always inclined to show indifferent attitude towards Netaji Subhas Chandra Bose, the great national hero of our country or at any point of time the whole nation was about to go in oblivion as to our national hero, heritage and the noble ideals, which inspired our national struggle for freedom due to motivation as alleged in paragraph 3 of the said petition or at all. With further reference thereto I say that the petitioners have sought to exortcise the unknown zone of the Government policy and failed to demonstrate any such action or inaction on the part of the Central Government in the matter of Netaji Subhas Chandra Bose. It appears that the petitioners have sought to ventilate their emotions by the said petition oblique with ulterior motive to render the Central Government to social ridicule by making this Hon'ble Court an instrumentality therefor.

8. The statements made in paragraphs 4, 5 and 6 are matters of record, I, however, do not make any admission with regard thereto and say as follows:-

- a) On the question of alleged disappearance of Netaji Subhas Chandra Bose the Government of India, has, so far, appointed three Committee/Commissions. The first one was a Committee known as Shah Nawaz Committee consisting of three members appointed in 1956. The said Committee examined 67 witnesses and on consideration of the materials before them, two of three members of the said Committee concluded that Netaji Subhas Chandra Bose died in the plane crash at Taihoku, Formosa (now Taiwan) on 18.08.1945 and his ashes were taken to Tokyo and preserved in Renkoji Temple there, the other member submitted a dissenting report and the

7. That it is further submitted that as per report of the State Government, the detainee is allegedly a member of Kanglei Yaol Kanna Lup (KYKL), a banned organization since 2009. The detainee and his associates were allegedly involved in extortion of money from the general public. The detainee & his associates allegedly started looking after specifically the education department of Manipur in order to make wrongful gain in the name of bringing quality education in Manipur. The detainee and his associates went to the extent of killing Dr. Kunj Bihari Singh, Chairman, Board of Secondary Education in their pursuits to extort money. It has been alleged that the detainee will continue to indulge in activities prejudicial to security of state and maintenance of public order unless he is detained under the NSA.

(x) 8//

8. That in view of the submissions in the aforesaid paras, no case has been made out by the petitioner for interference with the order and the petition deserves to be rejected.

DEPONENT

VERIFICATION

I, the above named deponent, do hereby swear and declare that the contents of this affidavit are true to my knowledge and are based on papers available on record. That no part of this affidavit is false and nothing material has been concealed in it.

Verified at New Delhi. the

DEPONENT

1/8. It is further submitted that a report ^{of detention of the detainee} as envisaged under section 3(5) of the NSA Act 1980 was received in this Ministry on _____ through State Govt. of Manipur letter No _____ dt. _____

hon

405 388 880

Government of India accepted the majority report of the said Committee.

- b) Thereafter sometime in 1970 the Government of India appointed a one man⁽⁴⁾ Commission under Justice (Retd.) G. B. Khosla. On the basis of the materials on record the said Commission also came to the conclusion that Netaji Subhas Chandra Bose died in the plane crash at Taihoku, on 18.08.1945 and the ashes preserved in Renkoji Temple, Tokyo are of Netaji Subhas Chandra Bose.
- c) Subsequently a writ petition was filed before the Division Bench of this Hon'ble Court. After hearing the rival submissions made at the Bar by a judgement and order dated 30.04.1998 made in the said writ petition the Division Bench of this Hon'ble Court was pleased to direct the Union of India to re-inquire the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. Following the same by a motion adopted by the West Bengal Legislative Assembly on 24.12.1998 demanding of the Government of India to make arrangements for availability of records and documents in and outside India enabling access of the Scholars and people thereto and to institute a fresh inquiry into the matter to eradicate the mystery regarding the whereabouts of Netaji Subhas Chandra Bose.
- d) Thereafter in exercise of the power conferred by the Commission of Inquiry Act, Government of India appointed a Commission headed by Justice (Retd.) M. K. Mukherjee into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including a) Whether Netaji Subhas Chandra Bose is dead or alive, b) If he is dead, whether he died in the plane crash as alleged, c) Whether the ashes preserved in Japanese temple are ashes of Netaji Subhas

detention order dated 31.08.2009 merited rejection. The
detenue was allegedly involved in making of fake coins of ~~5~~ ^{five} Rupees
~~Rs.~~ denomination, ~~5~~ ^{Six} hundred fake currency coins,
alongwith equipments used to manufacture ^{them} were also
recovered from the detenue. It is further submitted that the
menace of fake currency coins poses a serious threat to the
national security and economy of the country.

11. It is most humbly submitted that the detention order dated
31.08.2009 is well founded and does not merit interference
by the Hon'ble High Court in exercise of its jurisdiction under
226 of Constitution of India.
12. In the premises aforesaid it is most respectfully submitted
that the Special Leave Petition be allowed.

DEPONENT

VERIFICATION-

Verified at Delhi on this day of January, 2011 that the
contents of the affidavit are true to the best of my knowledge and
nothing material has been concealed therefrom.

DEPONENT

2011

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Chandra Bose d) Whether he has died in any other manner in any other place, if so, when and how and e) If he is alive, in respect of his whereabouts.

- e) Justice Mukherjee Commission^⑤ of Inquiry submitted its report on 8th November, 2005 on the following terms of reference and concluded the following:-

Sl. No.	Terms of Reference	Conclusion of the Commission
A.	Whether Netaji Subhas Chandra Bose is dead or alive.	Netaji Subhas Chandra Bose is dead.
C.	Whether the ashes preserved in Japanese temple are ashes of Netaji Subhas Chandra Bose.	The ashes are not of Netaji.
D.	Whether he has died in any other manner in any other place, if so, when and how.	In the absence of any clinching evidence a positive answer cannot be given.
E.	If he is alive, in respect of his whereabouts.	Answer already given in column (A) above.

The Commission also observed as follows:-

"5.1.1. As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings - that in undertaking the scrutiny of the publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash as alleged."

- f) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1973 also encountered the same predicament. The said Committee and Commission, relied on the oral

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7. I respectfully submit that the State of Uttar Pradesh also forwarded a copy of the representation dated 07.09.2009 which was received in the concerned section on 23.09.2009.
8. A wireless message No. II/15028/621/2009-NSA dated 24.09.2009 was sent to the Home Secretary, Government of Uttar Pradesh and Superintendent, District Jail, Lucknow informing that the representation of Shri Aas Mohammad alias Ashu was considered and rejected by the Central Government on 22.09.2009. A copy of the wireless message No. II/15028/621/2009-NSA dated 24.09.2009 is annexed herewith and marked as Annexure R-1.
9. The Home Secretary, Government of Uttar Pradesh and Superintendent, District Jail, Lucknow were also requested to inform the Petitioner that his request for revocation of detention order passed against him has not been acceded to by the Central Government. The Petitioner was also informed of the decision by a letter addressed to the detainee dated 24.09.2009. A copy of the letter dated 24.09.2009 is annexed herewith and marked as Annexure R-2.
10. The Union of India has duly considered the representation of the Petitioner dated 07.09.2009 along with all relevant material and, in accordance with the letter and spirit of law, found that representation of the Petitioner against the

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evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18.08.1945 and he was cremated in Taiwan crematorium and his ^⑥ ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disproves the plane crash theory in the face of overwhelming oral evidence, particularly, of those who were co-passengers of Netaji and also the Doctors and staffs of the hospital, where he was treated to severe and severe burn injuries sustained in the plane crash. The Government of India did not accept the conclusion of the JMCI.

- g) Report of the JMCI was placed before both the Houses of Parliament alongwith the Action Taken Report (ATR) on 17.05.2006 as per Section 3(4) of the Commission of Inquiry Act, 1954. The relevant portion of the said ATR is as follows:-

"2. The Government have examined the report submitted by the Commission on 08.11.2005 in detail and have not agreed with the findings that:-

- i. Netaji did not die in the plane crash;
 - ii. The ashes in the Renkoji Temple were not of Netaji."
- h) It would be seen that the Government has accepted the majority report of the Committee/commission and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18.08.1945. Though the Justice Mukherjee Commission of Inquiry worked for six years and six months it could not find any evidence of the death of Netaji Subhas Chandra Bose in any other manner. Therefore, there is no other reason for the Government of India to accept the findings of the earlier two Committee/Commission were incorrect. Further, it was always open to the Government of India to accept or reject the recommendation/finding of the Commission.

3. That the contents of paras 19 and ground f) of para 20 of the petition concern Respondent no. 4 i.e. the Union of India. Rest of the allegations are made against other Respondents and as such no reply is being given for these in this affidavit.

4. That with regard to the contents of para 19 and ground f) of para 20 of the petition, it is submitted that a report as envisaged under Section 3(5) of the National Security Act, 1980 was made to the Central Government in the Ministry of Home Affairs by the Government of Manipur through its letter No. 17(1)/222/2010-H dated 30.10.2010. The said report was received by the Central Government in the concerned Desk in the Ministry of Home Affairs on 10.11.2010. The same was examined and placed before the Competent Authority on 11.11.2010 and was duly taken note of by the Competent Authority. Given the report from the State Government and the grounds of detention, there was no reason to interfere with the detention order.

5. However it is submitted that the parawise comments of the detaining authority were received by the Central Government in the concerned Section of Ministry of Home Affairs on 25.11.2010 through State Government of Manipur vide letter No. 17(1)/222/2010-H dated 24.11.2010 and a representation dated 16.11.2010 from the detainee was received by the Central Government in the concerned Section of Ministry of Home Affairs on 30.11.2010 through State Government of Manipur vide letter No. 17(1)/222/2010-H dated 22.11.2010. The representation was examined and processed on 30.11.2010 at the level of Deputy Secretary who submitted it to Union Home Secretary (who has been delegated with the powers by the Central Government to decide such cases) on 30.11.2010.

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Section 3(4) of the Commission of Inquiry Act, 1954 directs that the report of the Commission alongwith the ATR has to be placed before the Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by the Parliament on the report of the Justice Mukherjee Commission of Inquiry and, therefore, the issue concerning the said report stands out to be closed. The decision of the Government does not suffers from arbitrariness as there are good grounds mentioned in Clause (g) above for the Government to not accept the report of the Justice Mukherjee Commission of Inquiry. It has emphasized that the report and/or findings of the Justice Mukherjee Commission of Inquiry are meant for information of the Government and as such in view of the legal and Constitutional provisions the decision of the Government does not suffer from any illegality or arbitrariness. With further reference thereto I say that moreover the Action Taken Report of the Government has since been placed before the both the Houses of Parliament, which deliberated over the same the question of validity of the Government's action with regard to Justice Manoj Mukherjee Commission being the subject matter of Parliament cannot be agitated before this Hon'ble Court under the provisions of the Constitution of India.

9. With regard to the averments made in paragraph 7(i) and (ii) of the said petition I say that the Government of India is not sending money from public exchequer from maintenance of Renkoji Temple in Japan as alleged in the said paragraphs or at all.

10. With regard to the averments made in paragraph 7(iii) of the said petition I say that Netaji Research Bureau, an institute of history, politics and international relations, is a society under the Societies Registration Act, 1860 and an autonomous body, housed in its own premises, which is the ancestral house of Netaji Subhas Chandra Bose. A fifteen members' Council drawn from various walks of life all over India, for the

submitted that the delay in consideration of the representation (14.05.2009 to 12.06.2009) has been due to heavy work load and shortage of staff in the section at the relevant point of time. The shortage of staff has now been duly taken care of and the back log of pendency have been cleared as on date and work has been streamlined to avoid such lapses and delay in future. All the pending cases have since been disposed of and efforts will be made to ensure that all representations will be disposed of within two weeks of their receipts. In view of this, Hon'ble Court may kindly condone the delay.

5. That the detainee is involved in heinous crime of firing on a Government servant in broad day light in the officers colony, seriously injuring him as also terrorising the Government servants in general. As per the report of the State Government, it is apprehended that the detainee will act in a manner prejudicial to the maintenance of public order unless he is detained the NSA.

6. That in view of submissions in the paras above, no case has been made out by the detainee for interference and the petition deserves to be rejected.

[Signature]

DEPONENT

VERIFICATION

I, the above named deponent, do hereby swear and declare that the contents of this affidavit are true to my knowledge and are based on papers available on record. That no part of this affidavit is false and nothing material has been concealed in it.

Verified at New Delhi. the **23 OCT 2009**.

[Signature]

DEPONENT

Certified that the foregoing Statement was declared on solemn Affirmation before me which has been read over to the deponent who has admitted it as correct.

[Signature]
Notary, DELHI

23 OCT 2009



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governing body thereof is vested with the management and affairs of the Bureau established in 1957. The Bureau is engaged in preservation and propagation of the life and works of Netaji Subhas Chandra Bose for generations to come. In view of its ⁽⁸⁾prestigious history for decades, the Bureau has conveyed its discontent with the statements made in paragraph 7(iii) of the said petition.

11. With regard to the averments made in paragraph 7(iv) of the said petition I say that in view of what has been mentioned in paragraph ^(5/9)5 above the question of bringing back ashes kept in Renkoji Temple, Tokyo is fantastic and absurd to be accepted.

12. With regard to the averments made in paragraphs 8 and 9 of the said petition I say that it has been conveyed by the Ministry of External Affairs that regarding the news item, which appeared in "Pune Times" on 18.08.2010 that Union of India has not approved any proposal for bringing the ashes of Netaji Subhas Chandra Bose back to India. The Ministry of External Affairs has further conveyed that they are not in knowledge of any such proposal, which has allegedly been presented to Indian Embassy in Tokyo and commented the said news item as speculative.

13. The statements made in paragraphs 10 of the said petition deserve no comments at this end.

14. I deny and dispute the statements made in paragraph 11 of the said petition and say that as a matter of policy, submitting to the order made by this Hon'ble Court the Government of India appointed Justice Mukherjee Commission. However, the findings of the Commission with regard to the death of Netaji Subhas Chandra Bose appearing to be inconclusive vis-à-vis the findings of the earlier Shah Nawaz Committee and Khosla Commission was not accepted by the Government. With further reference thereto I say that in compliance with the provisions of the Commission of Inquiry Act, 1952 with the Action Taken Report on the report of Justice Mukherjee Commission the Government having placed the said report on the table of

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Supplementary Counter Affidavit
(On behalf of Union of India / Respondent No. 4)
Habeas Corpus Writ Petition No. 472 of 2009

Shri Ashok Kashyap

Petitioner

Versus

Union of India and others

Respondents

Affidavit of Smt. L. P. Shrivastava aged about 56 years, W/o Shri D. K. Shrivastava, working as Under Secretary, Ministry of Home Affairs, Government of India, New Delhi.

Deponent

I, the deponent abovenamed, do hereby solemnly affirm and state on oath as under.

1. That the deponent is Under Secretary, Ministry of Home Affairs, Government of India, New Delhi and authorised to depose the present affidavit on behalf of Respondent no. 4 and that the deponent in her official capacity is fully conversant with the facts deposed below.
2. That the deponent has read the Hon'ble Court's order dated 05.10.2009 and understood the contents thereof and is making additional submissions as under.
3. That it is humbly submitted before the Hon'ble Court that though there has been some delay in processing the representation, there has been no casualness or deliberate delay in dealing with the matter. The reason for the delay had already been submitted to this Hon'ble Court in para,6 of the counter affidavit filed on behalf of Respondent No. 4. It is

L.P. Shrivastava

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both the Houses of Parliament the Government has discharged its legal obligation thereto. It is denied that there is any political motivation and/or some other purposes behind the action of the Government as alleged in the said paragraph or at all.

(9)

15. With regard to the statements made in paragraph 12 of the said petition I deny that the Government of India is spending public money from public exchequer for upkeep and maintenance of the Renkoji Temple in Taihoku, Japan as alleged in the said paragraph or at all and say that no public money is being spent from public exchequer for carriage of any research work on the death of Netaji Subhas Chandra Bose.

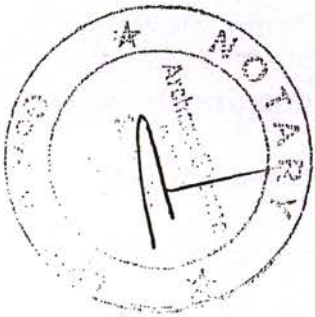
16. I deny and dispute the statements made in paragraph 13 of the said petition and deny categorically that the conducts of the Government as stated in are incredible in any manner whatsoever as alleged or at all, particularly, in absence of any demonstration thereto on the part of the petitioners.

17. It is categorically denied that the Government of India neither extended full co-operation in the matter of dispatching the documents or records relating to the inquiry on the alleged death of Netaji in plane crash nor the Government obeyed or followed the provisions of the Public Records Act, 1993 or utterly violated the prescribed procedures for keeping public records and brushed aside the liability and accountability for the maintenance of public records like Netaji Subhas Chandra Bose by merely filing an affidavit in this regard before the Justice Mukherjee Commission or that the Government has acted absolutely against the public interest and public good for which the concerned officials of the said department are required to be severely dealt with in accordance with law for gross negligence and dereliction of duties as alleged in the said paragraph or at all. With further reference thereto I say that the issue of the alleged non dispatch of the documents relating to the alleged death of Netaji in plane crash on 18.08.1945 is a subject matter of the report of Justice Mukherjee

submitted that the administrative delay in consideration of the representation (14.05.2009 to 12.06.2009) has been due to heavy work load and shortage of staff in the section at relevant point of time. The shortage of staff has now been duly taken care of and the back log of pendency have been cleared as on date and work has been streamlined to avoid such lapses and delay. All the pending cases have since been disposed of and it will be ensured that all representations will be disposed of within two weeks of their receipts. In view of this, Hon'ble Court may kindly condone the delay.

5. That the detainee is involved in heinous crime of firing on a Government servant in broad day light in the officers colony, seriously injuring him as also terrorizing the Government servants in general. As per report of the State Government, it is apprehended that the detainee will act in a manner prejudicial to the maintenance of public order unless he is detained the NSA.

6. That in view of submissions in the paras above, no case has been made out by the detainee for interference and the petition deserves to be rejected.



[Signature]
DEPONENT

VERIFICATION

I, the above named deponent, do hereby swear and declare that the contents of this affidavit are true to my knowledge and are based on papers available on record. That no part of this affidavit is false and nothing material has been concealed in it.

Verified at New Delhi. the 2.3.OCT..2009...

[Signature]
DEPONENT

Solemnly affirmed before me
[Signature]
Notary Public, N. Delhi

2.3 OCT 2009

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Commission and which since been placed in the table of both the Houses of Parliament being the subject matter in issue of the Parliament the same cannot be agitated before this Hon'ble Court in view of the constitutional bar under Article 122 of the ⁽¹⁰⁾ Constitution of India.

18. The contentions contained in paragraph 15 of the said petition having already been replied in the foregoing paragraphs do not deserve any further reply thereto.

19. The statements made in paragraph 16 of the said petition are concerned with the respondent No. 5 and as such the same deserve no comments on the part of the answering respondents.

20. The statements made in paragraph 17 of the said petition concern media reports, which deserve no comment on the part of the answering respondents.

21. With regard to the statements made in paragraph 18 of the said petition I say that the allegations made therein are mere apprehensions having no foundation thereof and as such there is no scope for issuance of any interim order as prayed for in the said petition.

22. With regard to the submissions made in paragraph 19 of the said petition containing the grounds thereof I deny that the Government of India has, at any point of time or by any stretch of imagination, shown any apathetic, deliberate and wilful attitude towards Netaji Subhas Chandra Bose or has not placed the report of Justice Mukherjee Commission for open debate and discussions before the Members of Parliament as wrongly submitted in the said paragraph or at all and as such the grounds to the said petition are not tenable in law and facts. I crave leave to cause further submissions thereon at the hearing of the said petition or as and when necessary.

23. With regard to the submissions made in paragraph 21 of the said petition I say that the action of the Government is transparent and lawful

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Supplementary Counter Affidavit

(On behalf of Union of India / Respondent No. 4)

Habeas Corpus Writ Petition No. 458 of 2009

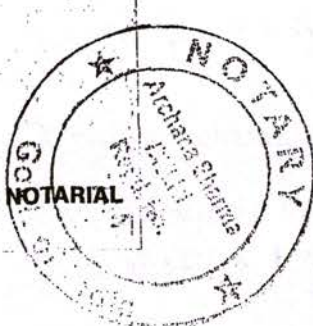
Shri Mukesh Choudhary

Petitioner

Versus

Union of India and others

Respondents



Affidavit of Smt. L. P. Shrivastava aged about 56 years, W/o Shri D. K. Shrivastava, working as Under Secretary, Ministry of Home Affairs, Government of India, New Delhi.

Deponent

I, the deponent abovenamed, do hereby solemnly affirm and state on oath as under.

1. That the deponent is Under Secretary, Ministry of Home Affairs, Government of India, New Delhi and authorised to depose the present affidavit on behalf of Respondent no. 4 and that the deponent in her official capacity is fully conversant with the facts deposed below.

2. That the deponent has read the Hon'ble Court's order dated 05.10.2009 and understood the contents thereof and is making additional submissions as under.

3. That it is humbly submitted before the Hon'ble Court that though there has been some delay in processing the representation, there has been no casualness or deliberate delay in dealing with the matter. The reason for the delay had already been submitted to this Hon'ble Court in para 6 of the counter affidavit filed on behalf of Respondent No. 4. It is



Archaia Sharma

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and as such any effort including those ventured to be made by or at the instance of the petitioners to drag the issue appears to be designed for publicity interest and political vendetta.

24. The submissions made in ⁽¹¹⁾ paragraphs 22 to 24 of the said petition deserve no comments on the part of the answering respondents.

25. That the said petition is motivated by publicity interest and a speculative one and as such is deserved to be dismissed.

26. That the statements made in paragraphs 1, 2, 3 and 5 of the foregoing affidavit are true to my knowledge, those made in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 are true to my information derived from records and the rest thereof are my humble submissions before this Hon'ble Court.

Prepared in my office

The Deponent is known to me

Clerk to: Mr.

Advocate

Advocate

Solemnly affirmed before me

on this day of May, 2011.

COMMISSIONER

Annexure C.A.I

FROM : HOME NEW DELHI

TO : HOMESEC, GOVT. OF MANIPUR, IMPHAL

REPEAT (1) : DISTRICT MAGISTRATE, IMPHAL WEST, MANIPUR.

REPEAT (2):SUPERINTENDENT MANIPUR CENTRAL JAIL, SAJIWA, MANIPUR.

REPEAT (3): SHRI MEISNAM JUGINDRO SINGH @ TOMAL S/O (L) SHRI M. ABHIRAM SINGH C/O SUPERINTENDENT MANIPUR CENTRAL JAIL, SAJIWA, MANIPUR.

- 3 DEC 2010

NO. II/15023/240/2010-NSA

DATED 03.12.2010

REFERENCE REPRESENTATION OF THE DETENUE SHRI MEISNAM JUGINDRO SINGH @ TOMAL S/O (L) SHRI M. ABHIRAM SINGH AGAINST THE ORDER OF DETENTION PASSED BY THE DISTRICT IMPHAL WEST ON 19.10.2010 UNDER NSA-1980 (.) THE REPRESENTATION WAS DULY CONSIDERED BY THE CENTRAL GOVERNMENT (.) REQUEST OF THE DETENU FOR REVOCATION OF THE DETENTION ORDER PASSED AGAINST HIM HAS NOT REPEAT NOT BEEN ACCEDDED TO BY THE CENTRAL GOVERNMENT (.) KINDLY INFORM THE DETENU ACCORDINGLY (.) MATTER MOST URGENT (.)

- 3 DEC 2010

- 3 DEC 2010

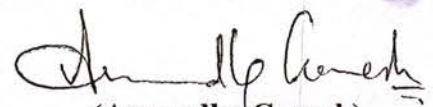
NO.- As above

DATED 03.12.2010

Copy also by post to:-

1. Shri Meisnam Jugindro Singh @ Tomal S/o (L) Shri M. Abhiram Singh (through Superintendent, Manipur Central Jail Sajiwa, Manipur).
2. The Superintendent, Manipur Central Jail Sajiwa, Manipur with request to serve the copy meant for the detenu and forward the acknowledgement from the detenu to this Ministry.




(Anuradha Ganesh)
Section Officer (NSA)
(अनुपम गणेश)
Ministry of Home Affairs
New Delhi
Govt. of India, New Delhi

DS(8) 1520/1
18/3/1

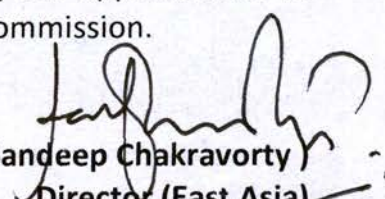
Ministry of External Affairs
(East Asia Division)

391
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Sub: Calcutta High Court – Discussions on 3 Writ Petition Nos. 2003/2006, 27541/2006 & 8251/2008 on the disappearance of Netaji Subhas Chandra Bose

-:0000:-

Reference MHA's U.O. No. 12014/12/07-Cdn dated 7.3.2011 on the above subject. Although we have correspondence mentioning Shri Tarakeswar Pal as Government Counsel, there are no papers in file indicating his appointment to represent Government of India before the Justice Mukherjee Commission.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

✓ Shri K. Muralidharan, DS(IS-II), Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi (Fax: 2461 7196)

MEA U.O. No.25/4/NGO-VOI-XVII

16 March, 2011

Dr. Ant up

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PRIME MINISTER'S OFFICE
[POLITICAL SECTION]

South Block, New Delhi – 110 101

Subject: Calcutta High Court – Discussions on 3 Writ Petition Nos. 2003/2006, 27541/2006 and 8215/2008 on the disappearance of Netaji Subhas Chandra Bose

Reference is invited to Ministry of Home Affairs UO note no. 12014/12/2007-Cdn. dated 7.3.2011, on the above subject.

2. The undersigned is directed to convey that as per available record no such information is available.


(Amit Agrawal)

Director

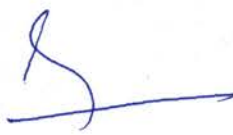
Tel. 2301 2613


Fax No. 2301 6857

Deputy Secretary (IS-II Division), Ministry of Home Affairs (Shri K. Muralidharan)

PMO ID no. 915/11/C/4/2010-Pol

Dated: 11.3.2011

P-pnt up 


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SO(Cdn)

R+I issue please

By Speed Post

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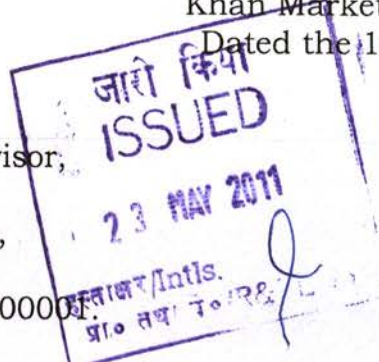
23/5/2011

To

Smt. S. Bhattacharya,
Joint Secretary & Legal Advisor,
Ministry of Law & Justice,
Department of Legal Affairs,
Branch Sectt.
11, Strand Road, Kolkata-700001.

No. 12014/12 /2007-Cdn
Government of India
Ministry of Home Affairs
IS II Division

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3,
Dated the 19th May, 2011,



23 MAY 2011

Sub: W.P. No. 27541 of 2006 -Ashim Kumar Ganguly Vs. Union of India & Ors.

Madam,

I am directed to convey that the 3 Writ Petitions on the alleged disappearance of Netaji Subhash Chandra Bose and bringing back the ashes kept in Rankoji Temple are being heard in the Hon'ble High Court, Calcutta. The Counter Affidavit in the above said petition has been finalized by Shri Shakeel Akhter as per the instructions from Mr. Somenath Bose, Sr. CGC. Shri Shakeel Akhter has also been entrusted to act as advocate on record in the writ petition filed by Shri Subhas Chandra Basu.

2. It is, therefore, requested to engage Shri Shakeel Akhter as Advocate on record in the above mentioned writ petition to represent Union of India in the matter and this Ministry may be informed immediately under intimation to Ld. ASG (Shri Razak), Kolkata.

Yours faithfully,

(K. Muralidharan)

Deputy Secretary to the Govt. of India
Tel. 24617196

23 MAY 2011

Copy to:

- (i) Shri Farooq M. Razak, Additional Solicitor General Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- (ii) Shri Shakeel Mohammed Akhter, Advocate, Central Govt. Standing Counsel, Govt. of India, High Court Calcutta, C/O Somenath

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Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50
Kolkata -700001.

(iii) Shri Somenath Bose, Sr. Advocate, 6, Old Post Office Street,
Ground Floor, Room No.50, Kolkata -700001.

Message Confirmation Report

425 JUN-21-2011 01:41 PM TUE

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Fax Number :
Name :

Name/Number : 03322485215
Page : 3
Start Time : JUN-21-2011 01:40PM TUE
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Mode : STD ECM
Results : [O.K]

R+I to issue please

By Speed Post

Ruchica

22/6.

जारी किया
ISSUED

22 JUN 2011

To

हस्ताक्षर/Intls. ...
प्रा० तथा प्रा०/R&I/LNBNo.12014/12/2007-Cdn
Government of India
Ministry of Home Affairs
IS-II DivisionLok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 21st June, 2011.

22 JUN 2011

Shri S.S.Sarkar, ILS,
Additional Govt. Advocate,
Ministry of Law & Justice,
Deptt. Of Legal Affairs,
Branch Secretariat, 11 Strand Road,
Middle Bldg, 2nd Floor,
Kolkata - 700 001.Sub: W.P. No.27541 of 2006 - Ashim Kumar Ganguly Vs. Union of India
& Ors.

Sir,

I am directed to refer to this Ministry's letter of even number dated 19th May, 2011 (copy enclosed) addressed to Smt S. Bhattacharya, Joint Secretary & Legal Advisor requesting to engage Shri Shakeel Mohd Akhter as advocate on record in the above mentioned writ petition to represent Union of India in the matter.

2. Since the case is coming up for hearing on **1st July, 2011**, it is therefore, requested to intimate the engagement of Shri Shakeel Mohd Akhter as advocate on record in the above mentioned writ petition to represent the Union of India in the matter.

Yours faithfully,

Bina Prasad
(Bina Prasad)
Director(S)

Copy to :

22 JUN 2011

1. Shri Farooq M. Razak, Additional Solicitor General, Kolkata, 19,
Balu Hakak Lane, Park Circus, Kolkata - 700 017

429

2. ✓ Shri Shakeel Mohammed Akhter, Advocate, Central Govt. Standing Counsel, Govt. of India, High Court Calcutta, C/O Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata - 700001.

3. ✓ Shri Somenath Bose, Sr. Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.

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No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

9th Floor, "C" Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi Dated 22nd July, 2011.

Office Memorandum

Sub: Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and
Anr Vs UOI and Ors.

The Note position of above mentioned Writ Petition of Cdn Section is missing since one month. It may have been linked up with some other Sections' file while coming from higher officers.

2. All are requested to make sincere efforts to trace the file (Nothings) by today evening if found with them. The date of hearing in the case is shortly due.



(B.K.Rekhi)

Section Officer(Cdn)


22.7.2011

Section Officer(Arms)  22/7

Section Officer(NCB)  22/7



Section Officer(NSA)  22/7

Section Officer(Legal-1)  22/7

Section Officer(Legal-II/NCB-II)  22/7

Consultant (VTV)  22/7

Copy to :-

 22/7  22/7
US(Arms)/US(Legal)/US(NSA)

429
No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

294
294
9th Floor, "C" Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi Dated 22nd July, 2011.

Office Memorandum

Sub: Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and
Anr Vs UOI and Ors.

The Note position of above mentioned Writ Petition of Cdn Section is missing since one month. It may have been linked up with some other Sections' file while coming from higher officers.

2. All are requested to make sincere efforts to trace the file (Nothings) by today evening if found with them. The date of hearing in the case is shortly due.



(B.K.Rekhi)

Section Officer(Cdn)

22.7.2011

Section Officer(Arms)

Section Officer(NCB)

Section Officer(NSA)

Section Officer(Legal-1)

Section Officer(Legal-II/NCB-II)

Consultant (VTV)

Copy to :-

US(Arms)/US(Legal)/US(NSA)

**Ms. Ruchika Singh,
Assistant**

- She is directed to trace the file in all almirahs of section and report in the evening.

Ruchika

22/7.

R&I
Please issue

480

398 395



**Speed Post
Court Case
Most Immediate**

No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

9th Floor, "C" Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi Dated 26th July, 2011.

To

27 JUL 2011

Shri G.S.Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkata

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I am to refer to this Ministry's letter of even number dated 18.2.2011 and reminder dated 27.4.2011 for preparing Counter Affidavit in Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors dated 10th September, 2010. The Counter Affidavit is still awaited. The case is coming up for hearing on 19.8.2011. It is therefore, requested, to get the Counter Affidavit prepared and send the same to this Ministry for vetting and filing the same in the High Court Calcutta in time.

Bina Prasad
(Bina Prasad)
Director(S)
Tel No.24617196

Copy to :-

27 JUL 2011

- (i) Shri Farooq M. Razak, Additional Solicitor General, Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- (ii) Shri R.N. Das, Sr, Counsel High Court Calcutta.
- (iii) Shri Shakeel Mohhamed Akhter, Advocate, C/O Somenath Bosc, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata - 700001.

SPEED POST

By Hand/Speed Post

MOL. F. No. 1204/Home/2008-m/1609

(IN ALL CORRESPONDENCE THE FILE NO.

AND CAUSE TITLE MAY CLEARLY BE GIVEN)

Tele : 22484806

FAX : 22311046

MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT KOLKATA

11, Strand Road,
Kolkata-700 001.

Date: 15-7-2011

To Mr K. Muralidharan
Dy Secy.
Ministry of Home Affairs
IS II Divn.
915 floor Lok Nayak Bldg
Khan Market
ND-3

WP 27541 W of 2008
Sh Ashim Jorganguly
-vs-
UOI &

Sub:

Sir, Madam,

Please note that Shri/Smt. Shakeel Md Akhter Achoui
(Bar Assn. Room No. High Court, Calcutta Telephone No. 9903321066
has been engaged in the aforesaid matter as Advocate on Record with
Sri/Smt. Farook M Razvi (Sh 9830228394 Bar Assn. Room No.
High Court, Calcutta Telephone No. 9830005652, Mr Tarun K Ghosh & Co.
as his/her sr.
Mr Gomenath Bose 9830005652, Mr Tarun K Ghosh & Co.

You are requested to depute one conversent officer with all
relevant documents of the case and furnish parawise comments brief history
and necessary instruction etc. for drawing Affidavit in Opposition/Reply
/Application/Appeal etc. to contact this Ministry and Counsel engaged to
do the needful and keep this office posted with the current development
of the case from time to time.

Incidental costs may be paid to the Advocate on Record for filing
Vakalatnama and Affidavit in Opposition etc.

Duly signed Vakalatnama by the concerned department of UOI may
be furnished immediately after receipt of this letter.

Department concerned is request to return the petition/application
as enclosed after making Xerox.

Yours faithfully,

(G. S. Makkar)

Jr. Central Govt. Advocate.

inclo. as above.

selcdn

432
SPEED POST
400 347

1352/10/10/11
1/9

F.No. 1204/Home/06-III. 11884/5996
GOVERNMENT OF INDIA
Ministry of Law & Justice
Deptt. of Legal Affairs
11, Strand Road
Kolkata

Date: 17.08.2011

FAX No.22311646
Tel. No.22484806

To
Mr. Somnath Bose
Advocate
High Court, Calcutta.

Sub : W.P. No.27541 (W) of 2006
Shri Ashim Kr. Ganguly
-Vs-
Union of India & Ors.

Sir,

Please refer to letter dated 26.07.2011 received from the department concerned regarding drafting of A/O to the supplementary affidavit filed by the petitioner for which brief history, parawise comment etc. was sent to you for further necessary action. You are requested to inform the department concerned under intimation to this office about the status of filing affidavit-in-oppositioin to the supplementary affidavit filed by the petitioner.

This is for your informatioin and necessary action.

Yours faithfully,

(G.S. Makker)
Jr. Central Govt. Advocate.

1/9/11
1/9/11
50CC

Copy to :
Shri. Bina Prasad, Director(S), Ministry of Home Affairs, IS-II Division, 9th floor, 'C' Wing, Lok Nayak Bhawan, Khan Market, New Delhi . This is to inform you that engagement of Mr. R. N. Das, Advocate was cancelled on 23.11.10 in the aforesaid matter.

(Jr. C.G.A.)

433

By Speed Post

Most Immediate

No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

9th Floor, "C" Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi Dated 31st October, 2011.

जाता क्रिया
ISSUED

- 2 NOV 2011

हस्ताक्षर/Intls.
प्रा० तथा प्रे०/RB/LNB

R+I
Please see
BM
2/11

To

Shri G.S.Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkata

- 2 NOV 2011

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I am to refer to Ministry of Law & Justice, Deptt. of Legal Affairs letter No. 1204/Home/06-III/1884/5996 dated 17.8.2011 w.r.t. this Ministry letter of even number dated 26.7.2011 for preparing Counter Affidavit in Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors dated 10th September, 2010. Parawise comments in this regard were sent to you on 21.2.2011. The Counter Affidavit is still awaited. It is, therefore, requested to get the Counter Affidavit prepared and send the same to this Ministry for vetting and filing the same in the High Court Calcutta in time.

Bina Prasad
(Bina Prasad)
Director(S)

Tel No.24617196

- 2 NOV 2011

o/c

Copy to :-

- (i) Shri Farooq M. Razak, Additional Solicitor General, Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- (ii) Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.
- (iii) Shri Shakeel Mohhamed Akhter, Advocate, C/O Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata - 700001.

Rashmi issue

By Speed Post

R

14/12

Rashmi Goel,
Joint Secretary (IS-II)



भारत सरकार
GOVERNMENT OF INDIA

गृह मंत्रालय
MINISTRY OF HOME AFFAIRS

लोक नायक भवन, खान मार्केट
LOK NAYAK BHAVAN, KHAN MARKET

नई दिल्ली-110003
NEW DELHI-110003

D.O.No.12014/12 /2007-Cdn

Dated 12.12.2011

14 DEC 2011

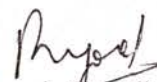
Dear Shri Razak

I would like to draw your attention to the Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors dated 10th September, 2010. Parawise comments on this Supplementary Writ Petition were sent to Jr. Central Govt. Advocate (Shri G.S. Makker), Ministry of Law & Justice, Deptt. of Legal Affairs, Kolkata with a copy to you on 18.2.2011. Reminders have been sent on 27.4.2011, 26.7.2011 and 31.10.2011 to expedite the Counter Affidavit to be filed by this Ministry. However, the Counter Affidavit is still awaited.

I shall be grateful if you could look into the matter and get the Counter Affidavit prepared and send it to this Ministry for vetting and filing the same in the High Court Calcutta in order to avoid any repercussion on the part of the Ministry.

With regards

Yours sincerely,


(Rashmi Goel)

Shri Farooq M. Razak,
Additional Solicitor General, Kolkata,
19, Balu Hakak Lane,
Park Circus, Kolkata - 700 017.

~~103~~ ~~400~~

Speed Post
Court Case
Most Immediate

No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi
Dated 26th, June, 2012

28/6/12

जमा किया
ISSUED

28 JUN 2012

हस्ताक्षर/मोहर
प्रा. सं. रा. पं. ०/२८/१२/१२

~~Tø~~

Shri G.S.Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkata

28 JUN 2012

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri
Ashim Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I am to refer to Ministry's letter of even no. dated 31.10.2011 for preparing Counter Affidavit in Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors dated 10th September, 2010. ✓ Para wise comments in this regard were sent to you on 21.2.2011. ✓ Reminder were sent on 27.4.2011, 26.7.2011, 31.10.2011 and 12.12.2011. The Counter Affidavit has not been received after a lapse of more than one year. It is therefore, requested to get the Counter Affidavit prepared and send the same to this Ministry for vetting and filing the same in the High Court Calcutta in time in order to avoid any repercussion on the part of the Ministry. Kindly also intimate the status of the case and next date of hearing.

Bina Prasad
(Bina Prasad)
Director(S)

28 JUN 2012

Copy to :-

- (i) Shri Farooq M. Razak, Additional Solicitor General, Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- (ii) Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.
- (iii) Shri Shakeel Mohhamed Akhter, Advocate, C/O Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.



No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi
Dated 26th, June, 2012

To
Shri G.S.Makker,
Jr. Central Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkata

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri
Ashim Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I am to refer to Ministry's letter of even no. dated 31.10.2011 for preparing Counter Affidavit in Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors dated 10th September, 2010. Para wise comments in this regard were sent to you on 21.2.2011. Reminder were sent on 27.4.2011, 26.7.2011, 31.10.2011 and 12.12.2011. The Counter Affidavit has not been received after a lapse of more than one year. It is therefore, requested to get the Counter Affidavit prepared and send the same to this Ministry for vetting and filing the same in the High Court Calcutta in time in order to avoid any repercussion on the part of the Ministry. Kindly also intimate the status of the case and next date of hearing.

Bina Prasad
(Bina Prasad)
Director(S)

Copy to :-

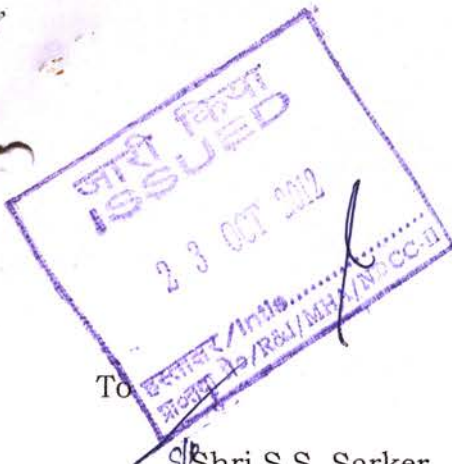
- (i) Shri Farooq M. Razak, Additional Solicitor General, Kolkata, 19, Balu Hakak Lane, Park Circus, Kolkata - 700 017.
- (ii) Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.
- (iii) Shri Shakeel Mohhamed Akhter, Advocate, C/O Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.

267 section
the issue 35/p
Nagarj
23/10/2012

437

Speed Post
Court Case
Most Immediate

405 S/p 402



No.12014/12 /2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

9th Floor, "C" Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi Dated 18th October, 2012.

23 OCT 2012

To

Shri S.S. Sarker,
Additional Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkata

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim
Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I would like to draw your attention to the Supplementary Writ
Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs
UOI and Ors dated 10th September, 2010. Parawise comments on this
Supplementary Writ Petition were sent on 18.2.2011. Reminders have
been sent on 27.4.2011, 26.7.2011, 31.10.2011, 12.12.2011 and
26.6.2012 to expedite the Counter Affidavit to be filed by this Ministry.
However, the Counter Affidavit is still awaited.

2. It is therefore requested to get the Counter Affidavit prepared and
send it to this Ministry for vetting and filing the same in the High Court
Calcutta in order to avoid any repercussion on the part of the Ministry.
Kindly also intimate the status of the case and next date of hearing.

Bina Prasad
(Bina Prasad)
Director (S)

432

~~406-403~~

Copy to :-

23 OCT 2012

s/p
(i)

Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.

s/p
(ii)

Shri Shakeel Mohhamed Akhter, Advocate, C/O Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.50, Kolkata -700001.

भारत डाक सेवा
O. I. G. S.

1596



FRN-12014/12/2007-cdn

dt: 28/6/2012

Speed Post

To

~~Shri Shakeel Mohhammed Khan,
Advocate, C/O Shri Somnath Bose,
Advocate, 6 Old Post Office Street,
Ground Floor, Room No. 50,
Kolkata-700001.~~

REDIRECTED
MHA
NDCC-II, Building
Cannaught Place
New Delhi-110022

TO
भारत डाक सेवा
R & S SECTION
नयाँ दिल्ली
ए. डी. शास्त्री
आवास विभाग
नयाँ दिल्ली-110022

3



Moved 2/27/12



231 section
P2 issue 15/p
neeraj
4/5/2013

439

403/404



No.12014/12/2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

Speed Post
Court Case
Most Immediate
Reminder No. 7

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.
New Delhi Dated 1st March, 2013.

To,

s/p
Shri S.S. Sarker,
Additional Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkatta.

04 MAR 2013

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I would like to draw attention to the Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors. dated 10th September, 2010. Parawise comments on this Supplementary Writ Petition were sent on 18.2.2011. Reminders have been sent on 27.4.2011, 26.7.2011, 31.10.2011, 12.12.2011, 26.6.2012 and 18.10.2012 to expedite the Counter Affidavit to be filed by this Ministry. However, the Counter Affidavit is still awaited.

2. It is therefore once again requested to get the Counter Affidavit prepared and send it to this Ministry for vetting and filing the same in the High Court. Kindly also intimate the status of the case and next date of hearing.

Yours faithfully,

(Ashish.V. Gawai)
Under Secretary(NSA)
Tel No.23438078

R&I section
Plz issue 35/b
Nunaj
29/4/2013

440

408 405
(Speed Post)



12014/12/2007-Cdn
Government of India
Ministry of Home Affairs
IS-II Division

2nd Floor, NDCC-II Buiding,
Jai Singh Road, New Delhi.
Dated 26th April, 2013.

To ^{S/P}
Shri Ashish Kumar Roy,
156, Purba Sinthee Road,
Baul Bakery, Dum Dum.
Kollatta-700 030.

29 APR 2013

Sub: Supplementary Writ Petition No. 27541 (W) of 2006 Shri Ashim
Kumar Ganguly and Anr Vs UOI and Ors.

Sir,

I am to refer to the Counter Supplementaty Affidavit sent by you
by e-mail. You are requested to send a copy of the Supplementary
Affidavit of which the Counter Affidavit has been sent by you.

29 APR 2013

(Ashish V. Gawai)
Under Secretary (NSA)

Copy to:

- ^{S/P} 1) Shri Somenath Bose, Advocate, 6, Old Post Office Street, Ground
Floor, Room No. 50, Kolkatta-700 001.
^{S/P} 2) Shri Shakeel Mohhammed Akhter, Advocate, C/O Shri Somnenath
Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No.
50, Kolkatta-700 001.

624/58/19/13
21/3

441

409/406

1924/1135

No. 1204/Home/06-III
592/Home/08, 909/Home/09

GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
Department of Legal Affairs
Branch Secretariat, Kolkata
11, Strand Road, Kolkata

Dated, the 8th March, 2013.

Tele No. 2248-6515, 2248-6516
FAX No 2248-5215, 2231-1646

To
The Director (S),
Government of India
Ministry of Home Affairs
IS-II Division, 9th floor, 'C'-Wing
Lok Nayak Bhavan
Khan Market
New Delhi – 110003.

Sub : **WP No. 27541 (W) of 2006**
Shri Ashim Kumar Ganguly and Anr. –vs- Union of India & Ors.

Attn.- Shri Ashish V. Gawai, Under Secretary (NSA), IS-II
Division, NDCC-II Bldg. Jai Singh Road, New Delhi.

Dear Sir,

This has reference to your letter No.12014/12/2007-Cdn, dated, the 18th October, 2012 on the above.

Shri Asish Kumar Roy, Advocate, Sr. Counsel, Gr.II has been engaged in the matter in place of Shakeel Md. Akhtar, Advocate in order to have better coordination between Shri Somenath Bose, Sr. Counsel, Gr.I and Shri Asish Kumar Roy, Sr. Counsel, Gr.II, engaged in the matter.

20/3/13
UJ (NSA)

21/3
JRC

442
410 405
- 2 -

All the papers including para-wise comments to the Supplementary Affidavit of the petitioner have been sent to Shri Asish Kumar Roy, Advocate for drafting of Affidavit-in-Opposition to that Supplementary Affidavit in consultation with Shri Somenath Bose, Advocate who will settle the draft Affidavit-in-Opposition.

Yours faithfully,



(S S SARKER)

Additional Govt. Advocate

Copies forwarded for information to :

1. Shri Somenath Bose, Advocate, Sr. Counsel, Gr.I
 2. Shri Asish Kumar Roy, Advocate, Sr. Counsel, Gr.II
- With request to do the needful.

(S S SARKER)

Additional Govt. Advocate

443
411 408
Asish Kumar Roy

ADVOCATE

HIGH COURT, CALCUTTA

BAR ASSOCIATION, ROOM NO. 11

Ph. : 2248-3190/3169, 2243-7363

Fax : (033) 2248-2313

Residence :

156, PURBA SINTHEE ROAD,

BAUL BAKERY, DUM DUM,

KOLKATA - 700 030 PH. : 2548-0423,

MOB. 9433185449, 9903448521

Date **07.05.2013**

To

Mr. Ashish V. Gawai

Under secretary (NSA)

Government of Home Affairs

IS-11-Division

2nd Floor, NDCC-II Building

Jai Singh road, New Delhi-110001.

Sub : W.P. No. 27541 (W) of 2006

. Shri Ashim Kumar Ganguly & Anr.

-vs-

Sir,

Union of India & Ors.

In response to your letter dated 26th April, 2013, I am sending herewith a copy of the supplementary Affidavit in the above matter of which the Affidavit-in-Opposition has been sent to you.

Thanking you,

Yours faithfully,

Enclo : A copy of the
Supplementary
Affidavit.

Asish Kumar Roy

Advocate

14/5
Secy

Recd
10.12.2010

2

ad - A-37

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412 409

DISTRICT: KOLKATA

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.NO. 2754(W) of 2006.

-AND -

In the Matter of:

Ashim Kumar Ganguly & Anr.

.... Petitioners

- Versus -

Union of India & Ors.

.... Respondents.

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONER ASHIM KUMAR GANGULY TO WRIT PETITION NO. 2754(W) of 2006 BASED ON SUBSEQUENT FACTS.

I, Ashim Kumar Ganguly, son of Late N.C. Ganguly, by profession-Lawyer, by faith- Hindu, residing at 90 A.K. Mukherjee Road, Flat No. 12, 3rd Floor, Kolkata-700 099, do hereby solemnly say and affirm as follows:-

1. That some times in the year 1997 challenging the alleged attempts made by the then Central Government to bring the ashes allegedly kept in the Renkoji Temple, Japan, your petitioner being a public spirited person and a lawyer of this Hon'ble Court moved the writ petition No. 1805(W) of 1997, whereby and wherounder, inter-alia, a writ of mandamus was prayed for from this Hon'ble Court for a direction upon the Central Government agencies not to take any steps and/or decision about the bringing back the ashes allegedly staked in the Renkoji Temple of Japan

in the name of National Hero Netaji Subhas Chandra Bose.

Having heard the said application the Division Bench of this Hon'ble Court presided over by the then Chief Justice Prabha Sankar Mishra and 2x Hon'ble Justice Barin Ghosh amongst the other, inter alia, held"... It is order that before accepting the ashes which are allegedly kept at the Ramkoji Temple, Japan as that of Netaji Subhash Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Ramkoji Temple, Japan are that of Netaji Subhash Chandra Bose and take the people of India in confidence...."

Photo copy of the order dated 7th April, 1998 is annexed hereto and marked as Annexure-"P".

2. The said order was duly communicated to all the authorities concerned.

3. Your petitioner in an inevitable circumstances had to address a letter to the then Prime Minister Sri Atal Bihari Bajpayee, Sri Jaswant Singh the then Foreign minister and Sri Lal Krishna Adwani, the then Home Minister, for their initiation in bringing back the alleged ashes staked in the Ramkoji Temple, Japan in the name of Netaji Subhas Chandra Bose, upon receiving the aforesaid letter of the petitioner a reply was given to

contd....3

given to the petitioner by the Ministry of Home Affairs, Government of India being the letter No. VI/11034/45/2000-IS(D:111), whereby and whereunder it was intimated to the petitioner that to the cumulative effect of the order of the Hon'ble Court the Central Government appoint a Commission of Inquiry u/s. 3 of the Commission of Inquiry Act, 1952 consisting of Retired Supreme Court Judge, Hon'ble Justice Mr. M.K. Mukherjee as to enquire into all the facts and circumstances relating to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent development connected therewith, inter-alia, as to whether the ashes in the Japanese Temple are of ashes of Netaji.

The Photo copy of the letter by the Home Ministry, Government of India is annexed hereto and marked as Annexure- "P-1".

4. Your petitioner states and submits that it is pertinent to enunciate that Justice Manoj Mukherjee Commission is the First Judicial Commission constituted under the Commission of Inquiry Act '1952, and it is the commission constituted by the Government of India by virtue of the Judicial intervention .

It is also pertinent to enunciate that, before Justice Manoj Mukherjee Commission there had been once committee and one commis

constituted by the Government of India, namely Shahnawaj
committee held in 1955 and next commission held in 1970
by retired Justice K.D. Kholsa.

5. Mr. Justice Manoj Mukherjee Commission(Retired) instituted
in the year 1999 to inquire into the controversy surrounding
the reported death of Netaji Subhas Chandra Bose in 1945.

The purpose of commission was to ascertain the following:-

- ✓ i. Whether Netaji Subhas Chandra Bose is dead or alive;
- ✓ ii. If he is dead whether he died in Planecrash, as alleged;
- ✓ iii. Whether the ashes in the Japanese temple are ashes of Netaji;
- ⊗ iv. Whether he has died in any other manner at any other place
and, if so, when and how;
- ✓ v. If he is alive, in respect of his whereabouts.

6. The conclusion of the Justice Manoj Mukherjee Commission
reported in Chapter 5 at Page 123 of the report submitted by
Justice Manoj Mukherjee(Retired) to the Government are as
follows:-

- ✓ a) Netaji Subhas Chandra Bose is dead;

contd...5

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415/43

- 5 -

- X b) He did not die in the plane crash as alleged;
- X c) The ashes in the Japanese Temple are not of the Netaji;
- X d) In absence of any clinching evidence a positive answer cannot be given and;
- e) Answer already given in (a) above.

The Photo copy of the conclusion submitted by Justice Manoj Mukherjee(Retired) is annexed hereto and marked as Annexure- "P-2".

7. Your petitioner states that having received the report of Justice Manoj Mukherjee (Retired) and based on the same a writ Petition was filed before this Hon'ble Court in 2006 being W.P.NO. 2754(W) of 2006(Ashim Kumar Ganguly and Anr. Vs-Union of India and others). In the said writ petition the cardinal prayer was as follows:-

- 1) to issue a writ of mandamus upon the Central Government to refrain from spending further Public Money from the Government Exchanger for Maintain and upkeeping the Renkoji Temple of Japan and allegedly keeping the ashes therein as that of Netaji Subhas Chandra Bose ;

contd...6

417
4/4
449
- 5 -
that a city based World Peace Centre (WPC) would bring the
ashes Netaji Subhash Chandra Bose which has received the
clearance from the Union Government through Indo Japan Asso-
ciation and the ashes that are currently in Tokyo's Netaji
Subhas Chandra Memorial will be handed over to the World Peace
Centre by the next Independence day. The said Publication
has been downloaded which is annexed hereto and marked as
Annexure - "P-3".

Be it mentioned here that Netaji is not now confined to
a particular region, or any family or any Governments or
any organization and he has become the concerned for all. So
any unilateral decision shall create serious consequences
upon the public sentiment at large.

9. Your petitioner being the petitioner in the writ petition
No.1805 of 1997, challenged any attempt about bringing back
the alleged ashes kept in Japan as that of Netaji Subhash
Chandra Bose and in the said writ petition the Hon'ble Court
had given a categorical direction on the same score. A commi-
ssion was also instituted, whereby it has been established
that the ashes staked in Japan are not of Netaji Subhash
Chandra Bose. Therefore, the question of bringing back and/or
~~preservingxxxxxxxxxxxx~~ ...

- 6 -

ii) A prayer for prohibiting the Respondent Central Government from incurring any amount from Public Exchequer for preservation and reservation and/or maintenance of Renkoji Temple in Japan allegedly keeping the ashes as that of Netaji Subhash Chandra Bose.

iii) A prayer was made for refraining from incurring any amount for Netaji Research Bureau being the Respondent No. 5 from Public Exchequer and to continue Research work on any issue pertaining to Netaji in particular about the alleged death of Netaji Subhas Chandra Bose and the ashes alleged allegedly kept in the Renkoji Temple of Japan.

iv) An order for restraining the respondent Central Government not to take any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple, Japan till the disposal of Writ Petition 27541 (W) of 2005.

8. The instant supplementary affidavit inevitably necessitated to affirm by the petitioners based on subsequent fact which has come like a bolt from the blue, that a Pune (Maharashtra) based Newspaper, the times News Network published

4/6 4/5/ - 8 -
preserving or staking ashes in Japan as that of Netaji

Subhas Chandra Bose by any agency either in India or else-

where are violative of the Commission's report. The Central

Government is therefore, has to come forward with its

specific opinion about the report published in time's news

Network at Pune (Maharashtra) as to ascertain the veracity

of the said report and to bring the people of India into

confidence thereto and to declare whether Central Government

has given any clearance and/or assent and/or accredited either

to the Pune based World Peace Centre or any other organization

in India or elsewhere, to the effect as published in the

Times News Network and also the said organization WPC (World

Peace Centre) be declared banned by the Central Government.

10. That your petitioner states and submits that the

instant affidavit may please be treated as part and parcel

of the writ petition No.2754 of 2006 and heard analogously

with the same.

12. That the statements made in paragraphs 1, 2, 3, 5, 6, 7,8

...

- 9 -

are true to my knowledge and based on record and rest
are my humble submission before this Hon'ble Court.

prepared in my office

SA
Deponent is known to me.

and identified by me.

Clerk to Mr.

SA
Advocate.

SA
Advocate.

Solemnly affirmed before me
on this the 10th day of
September, 2010.

SA
COMMISSIONER.

453
N.P. SINGH No 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
~~Ordnance~~
Original Side



12 AUG 1997
131
Rajesh K. Ganguly
3) 6/2 0 98
13/8

Seal / 29-17-97
The Hon'ble The Chief Justice

And

The Hon'ble Justice

Sarín Ghosh

President of the Union of India

In the Matter of : An application under Article 226 of the Constitution of India;

And

In the Matter of : Public Interest Litigation;

And

In the Matter of : A writ in the nature of Mandamus;

And

In the Matter of : A writ in the nature of Certiorari;

And

In the Matter of : Prohibition and/or any other such appropriate writ or writs, order or orders, direction or directions;

And

In the Matter of : Investigation in connection with the ashes of Netaji Subhas Bose as declared and/or announced by the Govt. of India;

And

In the Matter of : Inaction/non-action on the part of Govt. of India not having declared anything about the death of Netaji Subhas Chandra Bose before having taken any initiative to bring the ashes of Netaji Subhas Chandra Bose from Hasegawa temple of Japan;

And

In the Matter of : Ashim Kumar Ganguly, son of Late Netaji Chandra Ganguly, residing at 23/A, Sib Krishna Da Lane, P.O. Kankurgachi, Calcutta- 700 054.

.... Petitioner

484
427/9
2.

Verdicts

1) Govt. of India, service through Secretary, Ministry of Defence, New Delhi, (2) Govt. of West Bengal, service through Secretary, Home Department, Writers' buildings, Calcutta-1 (3) Ministry of Human Research & Development having its office at New Delhi ; (4) Ministry of Home affairs, Govt. of India, having its office at North Block, Central Secretariat, New Delhi- 4; (5) Ministry of External affairs, service through the Secretary having its office at South Block, Central Secretariate, New Delhi.

..... Respondents

Upon reading a petition of Ashim Kumar Ganguly, abovenamed (hereinafter referred to as 'the said petitioner') and his affidavit in verification thereof affirmed on the twenty ninth day of August, one thousand nine hundred ninety-seven and the exhibits annexed to the said petition and marked respectively 'A' and 'B' all filed on the twenty ninth day of August, one thousand nine hundred ninety seven. And upon hearing Mr. Subrata Mukherjee (Mr. Rajesh Ganguly appearing with him) Advocate for the said petitioner and Mr. U.P. Mukherjee, Advocate for the respondents abovenamed and upon the Advocate for the respondent Union of India abovenamed echoing the observations made by the Supreme Court of India in (Union of India & Urs.-Vs.- Bijan Ghosh & Urs.) (1998 W.B.L.R. (93) Page 9) stating before this court that, without there being a conclusive proof and/or otherwise determined in accordance with law the Union of India cannot accept that Netaji Subhas Chandra Bose

in Taiwan on eighteenth day of August, one thousand nine hundred forty five or at any later date and that the ashes which are said to be kept in the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and this court having no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose And it being difficult to accept that the Defence Minister of the Country has made a statement of such consequences as included in the said petition without verification

of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported And the said petitioner through the said petition now alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at the Kencogi Temple, Japan And in view of the assurance that nothing of the sort is likely to be done by the Government of India.

It is ordered that before adopting the ashes which are allegedly kept at the Kencogi Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence And it is further ordered that this matter is disposed of accordingly.

Witness: Shree Prabha Shanker Mishra, the Chief Justice at Calcutta aforesaid the seventh day of April in the year one thousand nine hundred and ninety-eight.

Souranga Chatterjya..... Advocate.

Rajan Ch. Dutt..... Advocate.

S. Chatterjee..... Advocate.

P. Ghosh
03.8.98.
For Registrar.

U. S.

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17.8.98

of record
(over) 111

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No. 1805 OF 1997

IN THE HIGH COURT AT CALCUTTA

~~Ordinary Original Side~~

Constitutional Writ Jurisdiction

Original Side

Ashim Kumar Ganguly

Union of India & Ors.

- (i) Date when the order of order was circulated
- (ii) Date of application for copy
- (iii) Date of complying the requisite number of copies and stamp
- (iv) Date of delivery of the requisite file and stamp
- (v) Date on which the copy is ready for delivery
- (vi) Date when delivery was taken of the copy by the applicant

.....

Order/..... of the 7th day of
 April, 1998.
 Filed this 10th day of
 August, 1998.

K. Rakshit
 Superintendent,
 Order Department.

Superintendent,
 Order Department
 High Court, C. S.

Rajesh Kumar Ganguly
 Adversus.

422 425
457
P-1
Registered

No.VI/11034/45/2000-IS(D.III)

Government of India
Ministry of Home Affairs

Date. 25-2-2000

To : Shri Ashim Kumar Ganguly
MA,LLB,P.G., Diploma in Management,
Advocate, High Court, Calcutta,
Bar Association,
Room No.12 (Ground Floor)
Calcutta

Subject:- Letters addressed to Prime Minister, Home Minister and Minister for Foreign Affairs inviting attention to the order dated 17.4.1998 passed by Hon'ble High Court at Calcutta in connection with the alleged ashes of Netaji Subhas Chandra Bose.

Sir,

Kindly refer to your letter dated 1.2.2000 on the said subject. In this connection you will kindly appreciate that the Government is already aware of the order dated 17.4.1998 passed by a Division Bench of the Hon'ble High Court at Calcutta in Writ Petition No.1805 (W) of 1997. This order was also followed by another order of the Hon'ble High Court at Calcutta in another Writ Petition No.281 of 1998 in which comprehensive directions were given for a vigorous inquiry in accordance with law, if necessary, by appointing a Commission of Inquiry. At the same time, there was a Motion adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand was made for a fresh inquiry into the alleged disappearance of Netaji Subhas Chandra Bose. The cumulative effect of all this is that the Central Government has already appointed a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952) consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Supreme Court of India. The Commission has been asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including

Contd..2/-

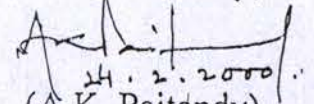
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- 2 -

inter-alia as to whether the ashes in the Japanese Temple are the ashes of Netaji. All the connected issues are naturally before the Commission of Inquiry and it is expected that these issues will receive due attention of the Commission in time.

Yours faithfully,


24.2.2000

(A.K. Paitandy)
Director (IS-I)

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P-2

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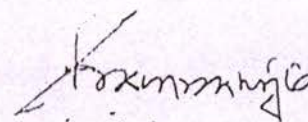
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

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P-3

Image, 1688x1233 pixels) - Scaled (43%)

<https://mail.google.com/mail/?ui=2&ik=1522ec5b9a&...>

Netaji's ashes to be brought to city by next Independence Day

TIMES NEWS NETWORK

Pune: City-based World Peace Centre (WPC) will bring the ashes of freedom fighter and Azaad Hind Sena founder Subhash Chandra Bose, who sought Japan's assistance for India's freedom movement during World War II, to Pune by the next Independence Day.

The centre has received clearance from the Union government through Indo-Japan association and the ashes that are currently in Tokyo's Netaji Subhash Chandra Memorial will be handed over to the WPC by the next Independence Day.

Addressing a news conference here on Monday Vishwanath Karad, chairman of World Peace Centre, said, "We have communicated with Kazuo Kaneko and Gen Kurosaki, who look after the Bose



A file photo of Subhash Chandra Bose during his visit to Pune

Memorial in Japan. The procedure for official transfer of the ashes to the centre has been initiated with

the help of Maharashtra businessman Balasaheb Deshmukh, who is in Japan since the past three decades. Homage will be paid at the Red Fort in New Delhi and the ashes would be deposited in the Ganga river on August 18 next year. Bose was killed on August 18 in Japan during the end of WW-II.

Deshmukh, who was also present for the news conference, said "I will be assisting the WPC to bring Bose's ashes to his own country and perform the last ritual. Bose has a daughter from his German wife, who is currently in Germany. Attempts to contact her failed. Since she is the only successor of the Indian leader, we need her consent to perform the last rituals. Meanwhile, the Japanese government has permitted the WPC to initiate the procedure to bring back the ashes."

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Received
On 01/10/2010
3/30 pm.

461
Received on
01/10/10 at 3/30 pm
DISTRICT, KOLKATA

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.No. 2754 (W) of 2006 :

- And -

In the matter of :

Ashim Kumar Ganguly & Anr.

... Petitioner.

- Versus -

Union of India & Ors.

... Respondents.

SUPPLEMENTARY AFFIDAVIT

on behalf of the petitioner.

Mr. Subhas Chandra Bose,
Advocate,
Bar Association, Room No. 12,
High Court, Calcutta.

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District: Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

W.P.No. 27541 (W) of 2006

In the matter of:

An application under Article 226
of the Constitution of India;

And

In the matter of:

Sri Ashim Kumar Ganguly &

Another

.. . . . Petitioners

-Versus-

Union of India & Others.

.. . . Respondents

Affidavit-in-opposition on behalf of the respondents
Nos. 1 to 4 in 5 to the writ petition the above matter and
Supplementary affidavit thereto.

I, ASHISH V GAWAI, aged about 42 years, son of DR. V. G. GAWAI, working for gains at Loknayak Bhawan, Khan Market, New Delhi- 110 003 do hereby solemnly affirm and say as follows:

(x) Ministry of Home Affairs, ^{1st Division} NDCC-II, Building.

1. I am the Under Secretary, Government of India in the Ministry of Home Affairs. I have made myself acquainted with the facts and circumstances of the above case and am authorized and competent to affirm this affidavit on behalf of the respondents Nos. 1 to 4 in the above writ petition.

2. I have read a copy of the writ petition in the above matter, for short, "the said petition" and the Supplementary affidavit dated 10.09.2010 thereto, understood the purport, meaning and scope thereof.

3. Save what would appear from record and save what have been specifically admitted herein I deny and dispute all allegations and/or contentions contained in the said petition.

4. Before advertng to the controversy sought to be raised in the said petition I would raise the following preliminary objections to the maintainability thereof:

i) Whereas as per the requirement of Section 3 (4) of the Commission of Inquiries Act, 1952, with the memorandum of action taken, the Central Government has since laid the report of Justice Monoj Mukherjee Commission, for short the said ^{JMCI} "JMMCI report", made under Section 3(1) *ibid*, before each House of Parliament, when in session, within ^{JMCI} the time extended in that behalf, the said JMMC report and the said Memorandum of action taken thereon, forming part of the proceedings of both the houses of Parliament, the petitioner cannot rust the jurisdiction of this Hon'ble Court to call, the validity thereof in question, de-hors the mandate of Article 122 of the Constitution of India.

ii) Whereas it is trite that the report of the enquiry commission appointed under the Commission of Inquiry Act, 1952 are recommendatory and are not enforceable *proprio vigore* and the Government is not

bound to accept such recommendation, prayer (b) to the said petition having already been satisfied with the Government action as above, the other prayers made in the said petition have become irrelevant and inconsequential.

iii) The said petition neither discloses any cause of action against the answering respondents nor does the petitioners have any cause of action against the answering respondents.

iv) The petitioners are busy body and meddlesome interloper masquerading as public spirited individual.

v) The said petition is actuated by malus animus and malice in law and has not disclosed any sufficient interest of the petitioners in the proceedings.

vi) The petitioners have not come to this Court in clean hands, heart, mind and objective and have camouflaged in the garb of Public Interest Litigation

to foster their personal pique in gross abuse of the process of Court.

vii) The said petition has been designed to besmirch ~~the fortitude and reputation~~ of the Central Government with the overt and covert intent to expose it to social ridicule, oblique with ulterior motive to wreaking vengeance with political overtone and as such the said petition is not maintainable.

viii) Whereas the Government has been engaged in addressing a lot of other unresolved problems of its citizens, the petitioners approach to this Hon'ble Court is not motivated as *pro bono publico* and as such also the said petition is not maintainable.

ix) The petitioner has sought to oxidize this Hon'ble court under the array of public interest by waiver of the rule of standing.

x) The petitioner has sought to ~~exoticize~~ ^{Venture into} an unknown zone in the assortment of Public Interest Litigation by

making bald, mischievous, reckless, unfounded and wild allegations against the answering respondents without supporting evidence thereto.

xi) By an extempore appearance the petitioners having assailed the justifiable executive policy, source of power whereof lies in the Statute, with incorrect, vague, indefinite and unverified information and rhetorical preaching of apostolic sermons in a cavalier fad, oblique with ulterior motives to camouflage as a self less public spirited individual.

xii) The petitioner has sought to invite this Hon'ble Court to encroach upon the sphere reserved by the Constitution and Statute to the Parliament and Executives.

xiii) The petitioners have succumb to spasmodic sentiments and behaved like a knight-errant roaming at will in the pursuit of issues providing publicity and as such the petitioner is not entitled to rust the jurisdiction of this Hon'ble Court under the garb of public interest litigation.

xiv) There are no discernible criteria to redress any genuine public harm or injury, oblique with malus animus the said petition is not maintainable.

xv) At any rate the said petition is evil designed, frivolous, vexatious, ^{misconceived} misconceived, mala fide, malevolent, speculative, harassing and an abuse in the process of Court and as such the said petition behoves dismissal.

5. Now before controverting the contentions contained in the said petition categorically and traversing them in seriatim I would state the following relevant facts:

a) The alleged disappearance of Subhas Chandra Bose, the great Leader, popularly known as Netaji, engaged the attention of the Central Government, right at the beginning and the Central Government has so far appointed three Committees/commissions to inquire into His alleged disappearance.

b) The first such Committee, consisting of three members, known as Shah Nawaz Committee was appointed in 1956, which examined 67 witnesses.

c) Addressing the evidence on record the majority of two members of the said Shah Nawaz Committee came to the conclusion that Netaji died in the Plane crash at Taihoku, Formosa, now Taiwan on 18th August, 1945 and his Ashes were taken to Tokyo and preserved in Renkoji Temple thereat. The other member of the said Shah Nawaz Committee, however, having submitted his dissenting report, the Central Government accepted the majority report.

d) The second inquiry was made by a one man ^{Under} Commission ^{Khoshla} of Justice (Retd.) G.D. Khoshla appointed in 1970. In ^{his} report submitted in 1974, Justice Khoshla ^{Came to the conclusion} Commission ^{found} that Netaji died in the Taihoku Plane crash on 18th August, 1945 and the Ashes preserved in Renkoji Temple are of Netaji.

e) Thus it is evident that both the earlier Commission and committee came to the conclusive finding that Netaji died in the Taihoku Plane crash on 18th August, 1945 and the Ashes preserved in Renkoji Temple are of the earthly corpse of Netaji.

f) Subsequently vide Judgment and Order dated 30.04.1998 made on a Writ petition moved before it, this Hon'ble Court was pleased to direct the Central Government to re-inquire into the alleged disappearance of Netaji in accordance with Law by appointing a Commission of Inquiry.

g) By adopting the motion on December 24, 1998 West Bengal Legislative Assembly also demanded of the Central Government to make necessary arrangement for making available all records and documents in and outside India to enable the scholars and people to have access to institute accede them and to commence a fresh inquiry to clear the air of the alleged ambiguity regarding the whereabouts of Netaji.

The mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

h) It was in this back ground, the Central Government appointed ^(A) ~~the Hon'ble~~ Justice (Retired) M.K. Mukherjee to inquire into all the facts and circumstances relating to the alleged disappearance of ^{Netaji} Neataji in 1945 and subsequent developments connected therewith, including ⁻⁽¹⁰⁰⁾ (a) Whether Netaji Subhas Chandra Bose is dead or alive; (b) If he is dead whether he died in the plane crash as alleged; (c) Whether the ashes in the Japanese temple are ashes of Netaji; (d) Whether he died in any other manner in any other place and if so, when and how; (e) if he is alive, in respect of his whereabouts.

The Justice Mukherjee Commission of Inquiry (JMMCI)

i) JMMCI submitted its report on November 8, 2005 on the following terms of reference:

Sl No.	Terms of reference	Conclusion of the Commission
A.	Whether Netaji Subhas Chandra Bose is dead or alive	Netaji Subhas Chandra Bose is dead.
B.	If he is dead whether he died in the plane crash, as alleged.	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese temple are ashes of Netaji	The ashes in the Japanese temple are not of Netaji

D	Whether he died in any other manner in any other place and if so, when and how;	In absence of any clinching evidence a positive answer cannot be given;
E	if he is alive, in respect of his whereabouts	Answer already given in (A) above.

Commission
j) The ~~JMMCI~~ also observed as under:-

“5.1.1. As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon the above findings –that in undertaking the scrutiny of publications touching upon the question of death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged”.

k) The Government of India examined the JMCI report in detail ^{It was} on ~~November 8, 2005~~ and found that the findings of ~~JMMCI~~ ^{JMCI} were inconclusive in many ways and it had not been able to provide for definitive findings. ^{JMCI} The findings of ~~JMMCI~~ that Netaji did not die in the plane crash are based on non-availability of ‘clinching

evidence’. *Chah Navy Committee of 1956 and War Commission 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were Co-passengers of Netaji in the second ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Reiji Temple. The Judge of Justice Mukherjee Commission of Inquiry, therefore do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those*

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who were Co-passengers of Netaji and also the
Doctor and Staff of the Hospital when he was
brought to Secunderabad and persons born in
Andhra Pradesh in the plane crash. The Govt of India
did not accept the conclusion of JmCI.

I) The report of the JmCI was placed before both
the House of the Parliament along with the Action Taken Report (ATR)
on 17th May, 2006 as per Section 3(4) of the Commission of Inquiry
Act, 1952. The relevant portion of the ATR reads as
follows.

"2. The Government has examined the Report submitted by
the Commission on 28th May, 2005 in detail and have not
agreed with the findings that:-

Netaji did not die in the plane crash; and

The ashes in the Benares Temple were not of Netaji.

The Report was placed before the House of Parliament on
17.05.2006 as required under Sub-Section 4 of Section 3
of the Commission of Inquiry Act, 1952.

(I) To be copied from Para (H) of

JMCI

l) Inasmuch as the findings of JMCI were inconclusive, the Government of India did not agree with the finding of JMCI that Netaji did not die in the plane crash; the ashes kept in Renkoji Temple are not of Netaji.

m) It is thus clear that whereas based on evidence the earlier committee and Commission came to the conclusion that Netaji died in plane crash on August 18, 1945 engaging about 6 years and 6 months Mukherjee commission could not come to a definitive conclusion that Netaji died in some other place and for some other reason.

n) Accordingly, with its' letters dated May 15, 2006 addressed to Hon'ble Speaker, Loke Sabha and the Hon'ble Chairman, Rajya Sabha, in due discharge of its obligation under Section 3(4) of the Commission of Enquiries Act, 1952, along with the memorandum of action taken thereon, the Central Government laid the said JMCI in both the Houses of Parliament on May 17, 2006.

o) Lok Sabha debated over the issue on 07.08.2006 and the Rajya Sabha debated over the issue on 24.08.2006, however, despite having addressed the issue the Parliament has not given any direction to the Central Government on the said report or memorandum of action taken thereon.

p) In view of the above the JMMCI report and the action taken report (ATR) of the Central Government have become the part of the proceedings of the Parliament and stands out to be closed chapter.

H X
6 q) The Central Government has not been spending money from public exchequer for maintenance of Renkoji Temple, Tokyo, Japan or to preserve and reserve the ashes kept therein or for any research on the death of Netaji carried by Netaji Research Bureau, Kolkata.

6. Now I will deal with the various allegation and /or contentions contained in the said petition categorically as if set out together and traversed in seriatim as follows:

7. With regard to the statements made in paragraph 1 of the said petition I make no admission and put the petitioners to the strict proof thereof.

8. I contradict that the Government of India has or ever had any apathetic, indifferent and derogatory attitude towards Netaji as observed by the first petitioner in paragraph 2 of the said petition or at all and say that in absence of any demonstration such observations stands out to be irrational and as such irrelevant. The rests of the contentions contained in the said paragraph being within the special knowledge of the petitioners I make no admission with regard thereto and put the petitioners to the strict proof thereof.

9. I deny and dispute the quixotic views of the petitioners that the Government of India has never assessed and/or popularly honoured the great role of Netaji, the great son of India or his insurmountable personality, sky kissing popularity and in-built quality of high ideals and the Government of India is always inclined to show an indifferent attitude towards Netaji or that at any point of time the whole

Nation was about to go on total oblivion as to Netaji, heritage, noble ideals, which inspired the national struggle for freedom due to any motivation as expressed in paragraph 3 of the said petition or at all. The rest of the contentions contained in the said paragraph are partly being matters of record and partly being stuffed with the spasmodic emotion of the petitioners I make no comments thereon.

10. With regard to the statements made in paragraphs 4, 5, 6, 7 and 8 of the said petition I rely on the statements made hereinabove and save what have been specifically admitted herein and save what would appear from record deny all allegations/ contentions contrary thereto. With regard to conferment of Bharat Ratna on Netaji I say that the January, 1992 policy decision in this regard was rolled back by the Central Government with the change in its policy. X 8

11. Save what would appear from record and save what have been specifically admitted herein I deny and dispute the allegations and/or contentions contained in paragraph 9 of the said petition. I differ from the petitioners' perception that being appointed by judicial intervention the sanctity,

reliability and credence of Mukherjee Commission are higher in comparison, to those committee/commission appointed by the Government as wrongly claimed in the said paragraph or at all and say whereas the proceedings of the commission are judicial proceedings the comparison apropos the quality of earlier committee/commission and JMMCI sought to be made in the said paragraph are per se misconceived, mala fide, malicious, surfacing lack of confidence of the petitioners on judicial proceedings. It is also denied that the people are agreed to accept the report of Mukherjee Commission and that since the Government of India constituted the earlier Committee/Commission of their own accord it exercised any control or supervision in all respect on the proceedings of those Committee/Commission or that for any reason the reports of the said Committee/Commission had lost the confidence and credence of the people at large as excessively and without any foundation claimed in the said paragraph or at all and say that the petitioners have ventured to adventurism to invite this Hon'ble Court to embark upon the Parliamentary proceedings on the Government's action in respect of the JMMCI report vis-à-vis the report of the earlier Committee/Commission.

12. With regard to paragraphs 10 and 11 of the said petition I rely on the statements made hereinabove and deny all allegations and /or contentions contained therein.

13. I deny and dispute the contentions contained in paragraph 12 of the said petition and say that the Parliament of India having not passed any direction on the Central Government on the ATR on JMMCI report, it will be without jurisdiction of the Central Government to make any declaration as stated in the said paragraph or all. With further reference thereto I repeat and reiterate that the Central Government has not been spending any money from public exchequer for maintenance of Renkoji Temple or to preserve and reserve the ashes kept therein or for any research on the death of Netaji carried by Netaji Research Bureau, Kolkata, as alleged therein or at all and say that Netaji Research Bureau, Kolkata, since established in 1957 being managed by its 15 member councils is a registered autonomous Society, housed in the ancestral home of Netaji is an institute of History, Politics and International relations

and has been preserving and propagating the life and works of Netaji for generations to come.

14. With regard to the contentions contained in paragraph 13 of the said petition I rely on the statements made hereinabove and deny all contentions contained therein.

15. I deny and dispute that the Government of India did not extend full co-operation in the matter of dispatching the documents or records relating to the enquiry on the death of Netaji or that the Government did not follow the Public Records Act, 1993 and failing compliance of the procedure prescribed thereunder in the matter of maintenance of Public Records brushed aside the liability by merely filing an affidavit before the JMMC without any explanation as regards the destruction of the public record relating to Netaji or that by not doing so, the Government has not acted in Public interest or that the concerned officers of the said department are required to be suitably dealt with in accordance with law or that any activity /conduct of the Government in this regard is contumacious and/or treacherous with people at large as well as the Nation as alleged in paragraph 14 of the

said petition or at all and say that all activity /conduct of the Government in this regard are fair and transparent.

16. Save what would appear from record and save what have been stated hereinabove I make no admission with regard to the statements made in paragraph 15 of the said petition.

17. The statements made in paragraph 16 of the said petition being the concern of the respondent No. 5, I abstain from making any comment thereon.

18. The statements made in paragraph 17 of the said petition is based on media report, without disclosing any authentic source thereto, which is otherwise irrelevant for resolution of the present controversy and as such, I would abstain from making any comment thereon and put the petitioner to the strict proof thereof.

19. The petitioners' apprehension expressed in paragraph 18 of the said petition is based on media report and as such may not be taken into countenance for any purposes

including for the purposes of grant of interim orders as prayed for.

20. With regard to the submissions made in paragraph 19 of the said petition containing the alleged grounds therefor I submit that that save for the purposes of publicity and political overtone the petitioners have no reason to be aggrieved by any fair, lawful and transparent activity and/or action of the Central Government apropos the enquiry relating to the alleged disappearance of Netaji. The alleged grounds for the said petition are wholly misconceived and merit no countenance. The answering respondents would countermand those alleged grounds by causing appropriate submissions made in Court at the hearing of this petition.

21. With regard to the submissions made in paragraph 20 of the said petition I repeat and reiterate that having addressed the report of JMMCI being unable to accept the same with its Memorandum of action taken the Central Government has since laid the same in the table of both the Houses of the Parliament, despite addressing the same during debate by

not giving any direction the Parliament has rendered the issues as closed.

22. The submissions made in paragraphs 21, 22 and of the said petition are matters of record, I, however make no admission thereto.

23. I deny that the said petition is made in good faith and to ensure justice as submitted in paragraph 24 of the said petition.

24. The said petition is frivolous, vexatious, speculative, harassing and not being in pro bono publico deserves to be dismissed.

25. The statements made in paragraphs 2 and 3 of the supplementary affidavit dated 10.09.2010 are matters of record and are substantially true and correct. With further reference thereto I say that long after the said Order was made the JMMCI submitted the inconclusive report with the Central Government on November 8, 2005, which having addressed the same declined to accept the recommendations

thereto and has since tabled its ATR with the report in both the houses of the Parliament, despite debating thereon by not issuing any direction thereon the Parliament rendered the matter closed.

26. Save what would appear from records and save what have been admitted herein I make no admission with regard to the statements made in paragraphs 4 to 10 of the said supplementary affidavit.

27. The statements made in paragraph hereinabove are true to my knowledge and those contained in paragraphs..... to ... thereof are true to my information derived from record, which I verily believe to be true and the rest thereof are my humble submissions before this Hon'ble Court.

Prepared in my office

Advocate

The deponent is known to me

Clerk to

Advocate

Solemnly affirmed before me

on thisday of March, 2013.

Commissioner.

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District: Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
W.P.No. 27541 (W) of 2006



In the matter of:

An application under Article 226
of the Constitution of India;

And

In the matter of:

Sri Ashim Kumar Ganguly &

Another

... .. Petitioners

-Versus-

Union of India & Others.

... .. Respondents

Affidavit-in-opposition on behalf of the respondents
Nos. 1 to 4 in 5 to the writ petition the above matter and
Supplementary affidavit thereto.

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I, ASHISH V. GAWAI, aged about 43 years, son of Dr. V.G. GAWAI, working for gains at Ministry of Home Affairs, IS-II Division, NDCC-II Building, New Delhi- 110 001 do hereby solemnly affirm and say as follows:

1. I am the Under Secretary, Government of India in the Ministry of Home Affairs. I have made myself acquainted with the facts and circumstances of the above case and am authorized and competent to affirm this affidavit on behalf of the respondents Nos. 1 to 4 in the above writ petition.

2. I have read a copy of the writ petition in the above matter, for short, "the said petition" and the Supplementary affidavit dated 10.09.2010 thereto, understood the purport, meaning and scope thereof.



3. Save what would appear from record and save what have been specifically admitted herein I deny and dispute all allegations and/or contentions contained in the said petition.

(Signature)

4. Before adverting to the controversy sought to be raised in the said petition I would raise the following preliminary objections to the maintainability thereof:

i) Whereas as per the requirement of Section 3 (4) of the Commission of Inquiries Act, 1952, with the memorandum of action taken, the Central Government has since laid the report of Justice Monoj Mukherjee Commission, for short the said "JMCI report", made under Section 3(1) *ibid*, before each House of Parliament, when in session, within the time extended in that behalf, the said JMCI report and the said Memorandum of action taken thereon, forming part of the proceedings of both the houses of Parliament, the petitioner cannot rust the jurisdiction of this Hon'ble Court to call, the validity thereof in question, de-hors the mandate of Article 122 of the Constitution of India.

ii) Whereas it is true that the report of the enquiry commission appointed under the Commission of Inquiry Act, 1952 are recommendatory and are not enforceable *proprio vigore* and the Government is not



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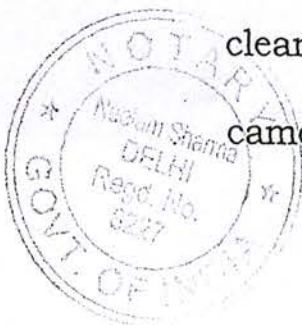
bound to accept such recommendation, prayer (b) to the said petition having already been satisfied with the Government action as above, the other prayers made in the said petition have become irrelevant and inconsequential.

iii) The said petition neither discloses any cause of action against the answering respondents nor does the petitioners have any cause of action against the answering respondents.

iv) The petitioners are busy body and meddlesome interloper masquerading as public spirited individual.

v) The said petition is actuated by malus animus and malice in law and has not disclosed any sufficient interest of the petitioners in the proceedings.

vi) The petitioners have not come to this Court in clean hands, heart, mind and objective and have camouflaged in the garb of Public Interest Litigation



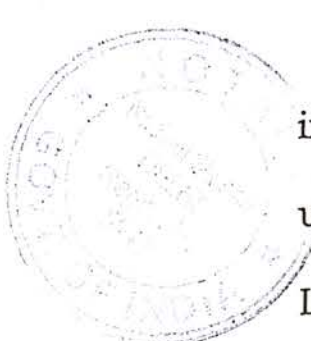
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to foster their personal pique in gross abuse of the process of Court.

vii) The said petition has been designed to besmirch the Central Government with the overt and covert intent to expose it to social ridicule, oblique with ulterior motive to wreaking vengeance with political overtone and as such the said petition is not maintainable.

viii) Whereas the Government has been engaged in addressing a lot of other unresolved problems of its citizens, the petitioners approach to this Hon'ble Court is not motivated as *pro bono publico* and as such also the said petition is not maintainable.



ix) The petitioner has sought to venture into an unknown zone in the assortment of Public Interest Litigation by making bold, mischievous, reckless, unfounded and wild allegations against the answering respondents without supporting evidence thereto.



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x) By an extempore appearance the petitioners having assailed the justifiable executive policy, source of power whereof lies in the Statute, with incorrect, vague, indefinite and unverified information and rhetorical preaching of apostolic sermons in a cavalier fad, oblique with ulterior motives to camouflage as a self less public spirited individual.

xi) The petitioner has sought to invite this Hon'ble Court to encroach upon the sphere reserved by the Constitution and Statute to the Parliament and Executives.



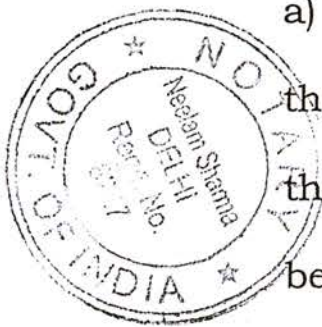
xii) The petitioners have succumb^{ed} to spasmodic sentiments and behaved like a knight-errant roaming at will in the pursuit of issues providing publicity and as such the petitioner is not entitled to rust the jurisdiction of this Hon'ble Court under the garb of public interest litigation.

Chakrabarty

xiii) There are no discernible criteria to redress any genuine public harm or injury, oblique with malus animus the said petition is not maintainable.

xiv) At any rate the said petition is evil designed, frivolous, vexatious, misconceived, mala fide, malevolent, speculative, harassing and an abuse in the process of Court and as such the said petition behoves dismissal.

5. Now before controverting the contentions contained in the said petition categorically and traversing them in seriatim I would state the following relevant facts:



a) The alleged disappearance of Subhas Chandra Bose, the great Leader, popularly known as Netaji, engaged the attention of the Central Government, right at the beginning and the Central Government has so far appointed three Committees/commissions to inquire into His alleged disappearance.

b) The first such Committee, consisting of three members, known as Shah Nawaz Committee was appointed in 1956, which examined 67 witnesses.

c) Addressing the evidence on record the majority of two members of the said Shah Nawaz Committee came to the conclusion that Netaji died in the Plane crash at Taihoku, Formosa, now Taiwan on 18th August, 1945 and his Ashes were taken to Tokyo and preserved in Renkoji Temple thereat. The other member of the said Shah Nawaz Committee, however, having submitted his dissenting report, the Central Government accepted the majority report.



d) The second inquiry was made by appointing a one man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. In his report submitted in 1974, Justice Khosla Commission came to the conclusion that Netaji died in the Taihoku Plane crash on 18th August, 1945 and the ashes preserved in Renkoji Temple are of Netaji.

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e) Subsequently vide Judgment and Order dated 30.04.1998 made on a Writ petition moved before it, this Hon'ble Court was pleased to direct the Central Government to re-inquire into the alleged disappearance of Netaji in accordance with Law by appointing a Commission of Inquiry.

f) By adopting the motion on December 24, 1998 West Bengal Legislative Assembly also demanded of the Central Government to make necessary arrangement for making available all records and documents in and outside India to enable the scholars and people to have access to them and institute a fresh inquiry to the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.



g) It was in this back ground the Central Government appointed a Commission headed by Justice (Retired) M.K. Mukherjee to inquire into all the facts and circumstances relating to the alleged disappearance of Netaji in 1945 and subsequent developments connected therewith, including

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- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is dead whether he died in the plane crash as alleged;
- (c) Whether the ashes in the Japanese temple are ashes of Netaji;
- (d) Whether he died in any other manner in any other place and if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(h) The Justice Mukherjee Commission of Inquiry (JMCI) submitted its report on November 8, 2005 on the following terms of reference:



Sl No.	Terms of reference	Conclusion of the Commission
A.	Whether Netaji Subhas Chandra Bose is dead or alive	Netaji Subhas Chandra Bose is dead.
B.	If he is dead whether he died in the plane crash, as alleged.	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese temple are ashes of Netaji	The ashes in the Japanese temple are not of Netaji
D	Whether he died in any other manner in any other place and if so, when and how.	In absence of any clinching evidence a positive answer cannot be given;
E	if he is alive, in respect of his whereabouts	Answer already given in (A) above.

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(i) The Commission also observed as under:-

"5.1.1. As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon the above findings –that in undertaking the scrutiny of publications touching upon the question of death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(j) The Government of India examined the JMCI report in detail. It was found that the findings of JMCI were inconclusive in many ways and it had not been able to provide for definitive findings. The findings of JMCI that Netaji did not die in the plane crash are based on non-availability of 'clinging evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and



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he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry (JMCI), therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.



(k) The report of the JMCI was placed before both the Houses of Parliament alongwith the Action Taken Report (ATR) on 17th May, 2006 as per section 3 (4) of Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

(i) Netaji did not die in the plane crash; and

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(ii) The ashes in the Renkoji Temple were not of Netaji."The Report was placed before both the Houses of Parliament on 17th May, 2006 as required under Sub-Section 4 of Section 3 of the Commission of Inquiry Act, 1952.

(l) It would be seen that the Government has accepted the majority reports of the Committees/ Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. The Commission of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds mentioned for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the



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Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from any illegality or arbitrariness.

7. With regard to the statements made in paragraph 1 to 6 of the said petition needs no comments, as the same are the matter of record.

8. With regard to the statements made in para 7(i) & (ii) of the Supplementary Affidavit it is submitted that the Government of India is not spending money from public exchequer for maintenance of Renkoji Temple in Tokyo, Japan.



9. With regard to statement made in Para 7 (iii) of the Supplementary Affidavit, it is submitted that the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. The Netaji Research Bureau an institute of History, Politics and

[Signature]

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International relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that that statements made in Para 7 (iii) of Supplementary Affidavit is rejected outright.

10. With regard to statement made in Para 7 (iv) of Supplementary Affidavit it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokyo does not arise.



11. With regard to the Statement made in Paras 8 & 9 of the Writ Petition, it has been conveyed by Ministry of External affairs that Union of India has not approved any proposal for bringing the ashes of Netaji Subhash Chandra Bose back to India. Ministry of External Affairs has further conveyed that they are not in knowledge of

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any such proposal which has been presented to Indian Embassy in Tokyo and Ministry of External Affairs has also commented that that news items referred to in Para 8 & 9 of the Supplementary Affidavit are speculative.

12. With regard to statement made in Para 10 & 12 of Supplementary Affidavit needs no comments.

13. The statements made in the above mentioned paragraphs are true to my information derived from record.

Prepared in my office

The deponent is known to me

Advocate

Clerk to

Advocate



Solemnly affirmed before me

on thisday of March, 2013.

Commissioner.

I identify the Deponent who has
Signed/put T.I. in my presence.

ATTESTED

NOTARY PUBLIC
DELHI (INDIA)

14 JUN 2013

NEELAM SHARMA
ADVOCATE
SUPREME COURT OF INDIA
165-A, Gate No. 6,
Patiala House Courts, New Delhi
(M) 9899408301, 9350477737

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District: Howrah
In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
W.P.No. 27541 (W) of 2006

In the matter of:
An application under Article 226
of the Constitution of India;

And

In the matter of:
Sri Ashim Kumar Ganguly &
Another

.. .. Petitioners

-Versus-

Union of India & Others.

.. .. Respondents

Affidavit-in-opposition on behalf
of the respondents Nos. 1 to 4 in
5 to the writ petition the above
matter and Supplementary
affidavit thereto.



Asish Kumar Roy, Advocate
Bar Association Room No.
High Court, Calcutta

R 87 Section
P12 Issue 2 S/P
25/6/2013

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(Speed Post)



Speed Post
Court Case
Most Immediate

No.12014/12/2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.
New Delhi Dated 21st June, 2013.

25 JUN 2013

Central
S/b
Shri S.S. Sarker,
Additional Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkatta. -700001

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors.

Sir,

I would like to draw attention to the Supplementary Writ Petition No. 27541(W) of 2006 Shri Ashim Kumar Ganguly and Anr. Vs UOI and Ors. dated 10th September, 2010. The notarised Counter Affidavit along with three copies signed by Shri Ashish Gawai, Undr Secretary is being sent for filing in the Kolkatta High Court. Kindly intimate the status of the case and next date of hearing.

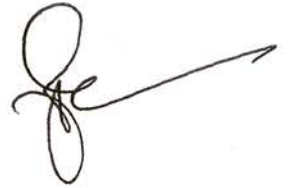
Yours faithfully,

(N.K. Job)
Deputy Secretary (Legal)
Tel No.23438083

503 465 488

Copy to:

^{s/p} Shri Shakeel Mohhammed Akhter, Advocate, C/O Shri Somnenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No. 50, Kolkatta-700 001 for information and necessary action.



Tele: 22484806
FAX : 22485215

By Hand/speed post

F. No. 1204/Home/2006-III. - 1994
(IN ALL CORRESPONDENCE THE FILE NO.
AND CAUSE TITLE MAY CLEARLY BE GIVEN)

MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRNACH SECRETARIATE KOLKATA

11, Strand Road,
Kolkata-700 001.

Date - 15/03/2013.

To
Mr. Ashish V. Gawai.
Under Secretary (NSA).
Ministry of Home Affairs.
IS-II Division.
2nd Floor, NDCE-II Building.
Jai Singh Road,
New Delhi-3.

Sub: W.P. NO - 27541 (W) of 2006.
Ashim Kumar Ganguly & Anr.
-VS-
Union of India & Ors.

Sir/Madam,

Please note that Shri/Smt. Asish Kumar Roy, Advocate
(Bar Assn. Room No. High Court, Calcutta Telephone No. 9433185449.
has been engaged in the aforesaid matter as Advocate on Record with
Sri/Smt. Somenath Bose, Advocate. (Bar Assn. Room No. as his/her Sr.
High Court, Calcutta Telephone 9830005652.

You are requested to depute one conversent officer with all relevant documents of the case and furnish parawise comments brief history and necessary instruction etc. for drawing Affidavit-in-Opposition/Reply Application/Appeal etc. to contact this Ministry and Counsel engaged to do the needful and keep this office posts with the current development of the raise from time to time.

Incidental costs may be paid to the Advocate on Record for filing Vakalatnama and Affidavit in Opposition etc.

Duly signed Vakalatnama by the concerned department for UOI may be furnish immediately after receipt of this letter.

Department concerned is requested to return the petitioner/application enclosed after making Xerox.

Yours faithfully,

(J. P. Dubey)
Assistant Legal Adviser.

Enclo : As above

FR

No. 1204/Home/2006-III
Ministry of Law and Justice
Department of Legal Affairs
Branch Secretariat Kolkata

11, Strand Road (Middle Building)
Kolkata - 700 001
Dated: 09.07.2013

To
Shri N.K. Job
Deputy Secretary (Legal)
Ministry of Home Affairs
IS-II Division
2nd Floor, NDCC-II Building
Jai Singh Road
New Delhi.

Sub: Supplementary Writ Petition No. 27541 (W) of 2006 Shri Ashim Kumar
Ganguly and Anr. Vs. UOI and Ors.

Sir,

I am directed to refer to your letter No. 12014/12/2007-Cdn dated 21.06. 2013 enclosing therewith the notarised Counter Affidavit in white paper, and to say that as per Calcutta High Court Rules and Procedure affidavits are required to be typed in green demi paper. The affidavit has been forwarded to the counsel. Since, the matter is due on 22.07.2013 there is sufficient time to replace the affidavit by fresh one taken out in green demi paper.

I am further directed to request you to do the needful in the line of above.

Yours faithfully,

(J. SRINIVASARAO)
Superintendent (Legal)

Encl: As Above

12/7/2013

SO (Coordn), IS-II

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District: Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

W.P.No. 27541 (W) of 2006

In the matter of:

An application under Article 226
of the Constitution of India;

And

In the matter of:

Sri Ashim Kumar Ganguly &

Another

... .. Petitioners

-Versus-

Union of India & Others.

... .. Respondents

Affidavit-in-opposition on behalf of the respondents
Nos. 1 to 4 in 5 to the writ petition the above matter and
Supplementary affidavit thereto.



I, ASHISH V. GAWAI, aged about 43 years, son of Dr. V.G. GAWAI, working for gains at Ministry of Home Affairs, IS-II Division, NDCC-II Building, New Delhi- 110 001 do hereby solemnly affirm and say as follows:

1. I am the Under Secretary, Government of India in the Ministry of Home Affairs. I have made myself acquainted with the facts and circumstances of the above case and am authorized and competent to affirm this affidavit on behalf of the respondents Nos. 1 to 4 in the above writ petition.

2. I have read a copy of the writ petition in the above matter, for short, "the said petition" and the Supplementary affidavit dated 10.09.2010 thereto, understood the purport, meaning and scope thereof.



3. Save what would appear from record and save what have been specifically admitted herein I deny and dispute all allegations and/or contentions contained in the said petition.

A handwritten signature in black ink, appearing to read "Ashish V. Gawai", written in a cursive style.

4. Before adverting to the controversy sought to be raised in the said petition I would raise the following preliminary objections to the maintainability thereof:

i) Whereas as per the requirement of Section 3 (4) of the Commission of Inquiries Act, 1952, with the memorandum of action taken, the Central Government has since laid the report of Justice Monoj Mukherjee Commission, for short the said "JMCI report", made under Section 3(1) *ibid*, before each House of Parliament, when in session, within the time extended in that behalf, the said JMCI report and the said Memorandum of action taken thereon, forming part of the proceedings of both the houses of Parliament, the petitioner cannot rust the jurisdiction of this Hon'ble Court to call, the validity thereof in question, de-hors the mandate of Article 122 of the Constitution of India.

ii) Whereas it is true that the report of the enquiry commission appointed under the Commission of Inquiry Act, 1952 are recommendatory and are not enforceable *proprio vigore* and the Government is not



A handwritten signature in black ink, appearing to be "Anil Kumar" or similar, written over a horizontal line.

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bound to accept such recommendation, prayer (b) to the said petition having already been satisfied with the Government action as above, the other prayers made in the said petition have become irrelevant and inconsequential.

iii) The said petition neither discloses any cause of action against the answering respondents nor does the petitioners have any cause of action against the answering respondents.

iv) The petitioners are busy body and meddlesome interloper masquerading as public spirited individual.

v) The said petition is actuated by malus animus and malice in law and has not disclosed any sufficient interest of the petitioners in the proceedings.

vi) The petitioners have not come to this Court in clean hands, heart, mind and objective and have camouflaged in the garb of Public Interest Litigation



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to foster their personal pique in gross abuse of the process of Court.

vii) The said petition has been designed to besmirch the Central Government with the overt and covert intent to expose it to social ridicule, oblique with ulterior motive to wreaking vengeance with political overtone and as such the said petition is not maintainable.

viii) Whereas the Government has been engaged in addressing a lot of other unresolved problems of its citizens, the petitioners approach to this Hon'ble Court is not motivated as *pro bono publico* and as such also the said petition is not maintainable.



ix) The petitioner has sought to venture into an unknown zone in the assortment of Public Interest Litigation by making bold, mischievous, reckless, unfounded and wild allegations against the answering respondents without supporting evidence thereto.

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x) By an extempore appearance the petitioners having assailed the justifiable executive policy, source of power whereof lies in the Statute, with incorrect, vague, indefinite and unverified information and rhetorical preaching of apostolic sermons in a cavalier fad, oblique with ulterior motives to camouflage as a self less public spirited individual.

xi) The petitioner has sought to invite this Hon'ble Court to encroach upon the sphere reserved by the Constitution and Statute to the Parliament and Executives.



xii) The petitioners have succumb^{ed} to spasmodic sentiments and behaved like a knight-errant roaming at will in the pursuit of issues providing publicity and as such the petitioner is not entitled to rust the jurisdiction of this Hon'ble Court under the garb of public interest litigation.

Neelam Sharma

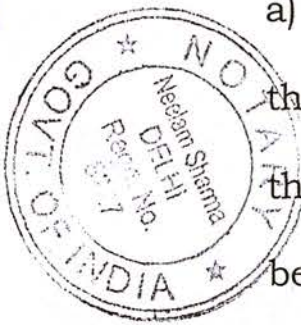
ST2 474 4/5

xiii) There are no discernible criteria to redress any genuine public harm or injury, oblique with malus animus the said petition is not maintainable.

xiv) At any rate the said petition is evil designed, frivolous, vexatious, misconceived, mala fide, malevolent, speculative, harassing and an abuse in the process of Court and as such the said petition behoves dismissal.

5. Now before controverting the contentions contained in the said petition categorically and traversing them in seriatim I would state the following relevant facts:

a) The alleged disappearance of Subhas Chandra Bose, the great Leader, popularly known as Netaji, engaged the attention of the Central Government, right at the beginning and the Central Government has so far appointed three Committees/commissions to inquire into His alleged disappearance.



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SLB

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b) The first such Committee, consisting of three members, known as Shah Nawaz Committee was appointed in 1956, which examined 67 witnesses.

c) Addressing the evidence on record the majority of two members of the said Shah Nawaz Committee came to the conclusion that Netaji died in the Plane crash at Taihoku, Formosa, now Taiwan on 18th August, 1945 and his Ashes were taken to Tokyo and preserved in Renkoji Temple thereat. The other member of the said Shah Nawaz Committee, however, having submitted his dissenting report, the Central Government accepted the majority report.

d) The second inquiry was made by appointing a one man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. In his report submitted in 1974, Justice Khosla Commission came to the conclusion that Netaji died in the Taihoku Plane crash on 18th August, 1945 and the ashes preserved in Renkoji Temple are of Netaji.



A handwritten signature in black ink, appearing to read "G.D. Khosla".

e) Subsequently vide Judgment and Order dated 30.04.1998 made on a Writ petition moved before it, this Hon'ble Court was pleased to direct the Central Government to re-inquire into the alleged disappearance of Netaji in accordance with Law by appointing a Commission of Inquiry.

f) By adopting the motion on December 24, 1998 West Bengal Legislative Assembly also demanded of the Central Government to make necessary arrangement for making available all records and documents in and outside India to enable the scholars and people to have access to them and institute a fresh inquiry to the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.



g) It was in this back ground the Central Government appointed a Commission headed by Justice (Retired) M.K. Mukherjee to inquire into all the facts and circumstances relating to the alleged disappearance of Netaji in 1945 and subsequent developments connected therewith, including

- 575
- 477
- 270
- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is dead whether he died in the plane crash as alleged;
- (c) Whether the ashes in the Japanese temple are ashes of Netaji;
- (d) Whether he died in any other manner in any other place and if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(h) The Justice Mukherjee Commission of Inquiry (JMCI) submitted its report on November 8, 2005 on the following terms of reference:



Sl No.	Terms of reference	Conclusion of the Commission
A.	Whether Netaji Subhas Chandra Bose is dead or alive	Netaji Subhas Chandra Bose is dead.
B.	If he is dead whether he died in the plane crash, as alleged.	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese temple are ashes of Netaji	The ashes in the Japanese temple are not of Netaji
D	Whether he died in any other manner in any other place and if so, when and how.	In absence of any clinching evidence a positive answer cannot be given;
E	if he is alive, in respect of his whereabouts	Answer already given in (A) above.

[Signature]

(i) The Commission also observed as under:-

"5.1.1. As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon the above findings -that in undertaking the scrutiny of publications touching upon the question of death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(j) The Government of India examined the JMCI report in detail. It was found that the findings of JMCI were inconclusive in many ways and it had not been able to provide for definitive findings. The findings of JMCI that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and



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he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry (JMCI), therefore, do not conclusively disapprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.



(k) The report of the JMCI was placed before both the Houses of Parliament alongwith the Action Taken Report (ATR) on 17th May, 2006 as per section 3 (4) of Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

(i) Netaji did not die in the plane crash; and

A handwritten signature in black ink, appearing to be "Rajiv Gandhi", written over a horizontal line.

580 480 483

(ii) The ashes in the Renkoji Temple were not of Netaji."The Report was placed before both the Houses of Parliament on 17th May, 2006 as required under Sub-Section 4 of Section 3 of the Commission of Inquiry Act, 1952.

(l) It would be seen that the Government has accepted the majority reports of the Committees/ Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. The Commission of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds mentioned for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the



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Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from any illegality or arbitrariness.

7. With regard to the statements made in paragraph 1 to 6 of the said petition needs no comments, as the same are the matter of record.

8. With regard to the statements made in para 7(i) & (ii) of the Supplementary Affidavit it is submitted that the Government of India is not spending money from public exchequer for maintenance of Renkoji Temple in Tokyo, Japan.



9. With regard to statement made in Para 7 (iii) of the Supplementary Affidavit, it is submitted that the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. The Netaji Research Bureau an institute of History, Politics and

A handwritten signature in black ink, appearing to be "Chakraborty", written over a horizontal line.

500 482 408

International relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that that statements made in Para 7 (iii) of Supplementary Affidavit is rejected outright.

10. With regard to statement made in Para 7 (iv) of Supplementary Affidavit it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokyo does not arise.



11. With regard to the Statement made in Paras 8 & 9 of the Writ Petition, it has been conveyed by Ministry of External affairs that Union of India has not approved any proposal for bringing the ashes of Netaji Subhash Chandra Bose back to India. Ministry of External Affairs has further conveyed that they are not in knowledge of

[Signature]

521 489 986

any such proposal which has been presented to Indian Embassy in Tokyo and Ministry of External Affairs has also commented that that news items referred to in Para 8 & 9 of the Supplementary Affidavit are speculative.

12. With regard to statement made in Para 10 & 12 of Supplementary Affidavit needs no comments.

13. The statements made in the above mentioned paragraphs are true to my information derived from record.



Prepared in my office

Advocate

The deponent is known to me

Clerk to

Advocate

Solemnly affirmed before me

on thisday of March, 2013.

Commissioner.

ATTESTED

NOTARY PUBLIC
DELHI (INDIA)

14 JUN 2013

NEELAM SHARMA
ADVOCATE
SUPREME COURT OF INDIA
165-A, Gate No. 6,
Patela House Courts, New Delhi
(M) 9899408301, 9350477737

I certify the Deponent who has
Signed/put T.D. in my presence.

522 484 385
District: Howrah
In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
W.P.No. 27541 (W) of 2006

In the matter of:
An application under Article 226
of the Constitution of India;

And

In the matter of:
Sri Ashim Kumar Ganguly &
Another

.. . . . Petitioners

-Versus-

Union of India & Others.

.. . . . Respondents

Affidavit-in-opposition on behalf
of the respondents Nos. 1 to 4 in
5 to the writ petition the above
matter and Supplementary
affidavit thereto.

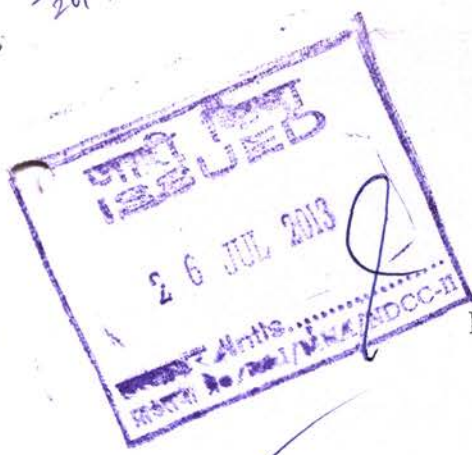


Asish Kumar Roy, Advocate
Bar Association Room No.
High Court, Calcutta

R&T section
PL2 issue 2 S/p
Nehraj
26/7/13

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Speed Post
Court Case
Most Immediate

No.12014/12/2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.
New Delhi Dated 26th July, 2013.

26 JUL 2013

S/p
Shri S.S. Sarker,
Additional Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkatta.

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri
Ashim Kumar Ganguly and Anr. Vs UOI and Ors.

Sir,

I am directed to refer to your letter No. 1204/Home/2006-III with reference to this Ministry's letter of even number dated 9.7.2013 and to say that notarised Counter Affidavit typed in green demi paper along with three copies is being sent for filing in the Calcutta High Court. Kindly intimate the status of the case and next date of hearing.

Yours faithfully

(Ashish V. Gawai)
Under Secretary(NSA)
av. gawai @nic.in
Tel No.23438083

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26 JUL 2013

Copy to:

a/b

Shri Shakeel Mohhammed Akhter, Advocate, C/O Shri Somnenath Bose, Advocate, 6, Old Post Office Street, Ground Floor, Room No. 50, Kolkatta-700 001 for information and necessary action.

525
487
District: Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

W.P.No. 27541 (W) of 2006

In the matter of:

An application under Article 226
of the Constitution of India;

And

In the matter of:

Sri Ashim Kumar Ganguly &

Another

... .. Petitioners

-Versus-

Union of India & Others.

... .. Respondents

Affidavit-in-opposition on behalf of the respondents

Nos. 1 to 4 in 5 to the writ petition the above matter and

Supplementary affidavit thereto.





allegations and/or contentions contained in the said petition.



4. Before advertng to the controversy sought to be raised in the said petition I would raise the following preliminary objections to the maintainability thereof:

i) Whereas as per the requirement of Section 3 (4) of the Commission of Inquiries Act, 1952, with the memorandum of action taken, the Central Government has since laid the report of Justice Monoj Mukherjee Commission, for short the said "JMCI report", made under Section 3(1) *ibid*, before each House of Parliament, when in session, within the time extended in that behalf, the said JMCI report and the said Memorandum of action taken thereon, forming part of the proceedings of both the houses of Parliament, the petitioner cannot rust the jurisdiction of this Hon'ble Court to call, the validity thereof in question, de-hors the mandate of Article 122 of the Constitution of India.

ii) Whereas it is true that the report of the enquiry commission appointed under the Commission of Inquiry Act, 1952 are recommendatory and are not enforceable *proprio vigore* and the Government is not



A handwritten signature in black ink, appearing to be "Rajesh Kumar", written over a horizontal line.

bound to accept such recommendation, prayer (b) to the said petition having already been satisfied with the Government action as above, the other prayers made in the said petition have become irrelevant and inconsequential.

iii) The said petition neither discloses any cause of action against the answering respondents nor does the petitioners have any cause of action against the answering respondents.

iv) The petitioners are busy body and meddlesome interloper masquerading as public spirited individual.

v) The said petition is actuated by malus animus and malice in law and has not disclosed any sufficient interest of the petitioners in the proceedings.

vi) The petitioners have not come to this Court in clean hands, heart, mind and objective and have camouflaged in the garb of Public Interest Litigation



A handwritten signature in black ink, appearing to be "Rajesh Kumar", written over a horizontal line.

to foster their personal pique in gross abuse of the process of Court.

vii) The said petition has been designed to besmirch the Central Government with the overt and covert intent to expose it to social ridicule, oblique with ulterior motive to wreaking vengeance with political overtone and as such the said petition is not maintainable.

viii) Whereas the Government has been engaged in addressing a lot of other unresolved problems of its citizens, the petitioners approach to this Hon'ble Court is not motivated as *pro bono publico* and as such also the said petition is not maintainable.

ix) The petitioner has sought to venture into an unknown zone in the assortment of Public Interest Litigation by making bald, mischievous, reckless, unfounded and wild allegations against the answering respondents without supporting evidence thereto.



x) By an extempore appearance the petitioners having assailed the justifiable executive policy, source of power whereof lies in the Statute, with incorrect, vague, indefinite and unverified information and rhetorical preaching of apostolic sermons in a cavalier fad, oblique with ulterior motives to camouflage as a self less public spirited individual.

xi) The petitioner has sought to invite this Hon'ble Court to encroach upon the sphere reserved by the Constitution and Statute to the Parliament and Executives.

xii) The petitioners have succumb to spasmodic sentiments and behaved like a knight-errant roaming at will in the pursuit of issues providing publicity and as such the petitioner is not entitled to rust the jurisdiction of this Hon'ble Court under the garb of public interest litigation.



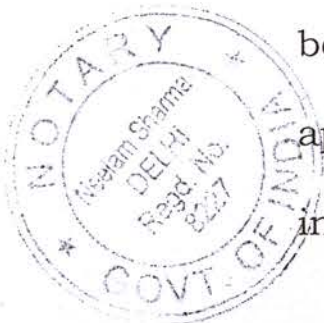
A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a final flourish.

xiii) There are no discernible criteria to redress any genuine public harm or injury, oblique with malus animus the said petition is not maintainable.

xiv) At any rate the said petition is evil designed, frivolous, vexatious, misconceived, mala fide, malevolent, speculative, harassing and an abuse in the process of Court and as such the said petition behoves dismissal.

5. Now before controverting the contentions contained in the said petition categorically and traversing them in seriatim I would state the following relevant facts:

a) The alleged disappearance of Subhas Chandra Bose, the great Leader, popularly known as Netaji, engaged the attention of the Central Government, right at the beginning and the Central Government has so far appointed three Committees/commissions to inquire into His alleged disappearance.



A handwritten signature in black ink, appearing to be "Chama" followed by a flourish.

b) The first such Committee, consisting of three members, known as Shah Nawaz Committee was appointed in 1956, which examined 67 witnesses.

c) Addressing the evidence on record the majority of two members of the said Shah Nawaz Committee came to the conclusion that Netaji died in the Plane crash at Taihoku, Formosa, now Taiwan on 18th August, 1945 and his Ashes were taken to Tokyo and preserved in Renkoji Temple thereat. The other member of the said Shah Nawaz Committee, however, having submitted his dissenting report, the Central Government accepted the majority report.

d) The second inquiry was made by appointing a one man Commission under Justice (Retd.) G.D. Khosla appointed in 1970. In his report submitted in 1974, Justice Khosla Commission came to the conclusion that Netaji died in the Taihoku Plane crash on 18th August, 1945 and the ashes preserved in Renkoji Temple are of Netaji.

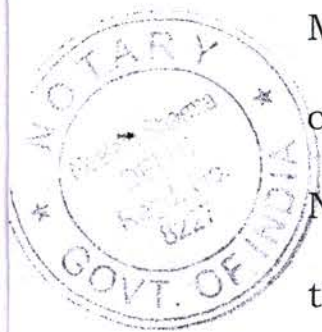


A handwritten signature in black ink, appearing to be "Rajendra".

e) Subsequently vide Judgment and Order dated 30.04.1998 made on a Writ petition moved before it, this Hon'ble Court was pleased to direct the Central Government to re-inquire into the alleged disappearance of Netaji in accordance with Law by appointing a Commission of Inquiry.

f) By adopting the motion on December 24, 1998 West Bengal Legislative Assembly also demanded of the Central Government to make necessary arrangement for making available all records and documents in and outside India to enable the scholars and people to have access to them and institute a fresh inquiry to the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.

g) It was in this back ground the Central Government appointed a Commission headed by Justice (Retired) M.K. Mukherjee to inquire into all the facts and circumstances relating to the alleged disappearance of Netaji in 1945 and subsequent developments connected therewith, including



- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is dead whether he died in the plane crash as alleged;
- (c) Whether the ashes in the Japanese temple are ashes of Netaji;
- (d) Whether he died in any other manner in any other place and if so, when and how;
- (e) if he is alive, in respect of his whereabouts.
- (h) The Justice Mukherjee Commission of Inquiry (JMCI) submitted its report on November 8, 2005 on the following terms of reference:

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A.	Whether Netaji Subhas Chandra Bose is dead or alive	Netaji Subhas Chandra Bose is dead.
B.	If he is dead whether he died in the plane crash, as alleged.	He did not die in the plane crash, as alleged
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D	Whether he died in any other manner in any other place and if so, when and how.	In absence of any clinching evidence a positive answer cannot be given;
E	if he is alive, in respect of his whereabouts	Answer already given in (A) above.





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(i) The Commission also observed as under:-

"5.1.1. As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon the above findings -that in undertaking the scrutiny of publications touching upon the question of death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(j) The Government of India examined the JMCI report in detail. It was found that the findings of JMCI were inconclusive in many ways and it had not been able to provide for definitive findings. The findings of JMCI that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and



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(k) The report of the JMCI was placed before both the Houses of Parliament alongwith the Action Taken Report (ATR) on 17th May, 2006 as per section 3 (4) of Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-


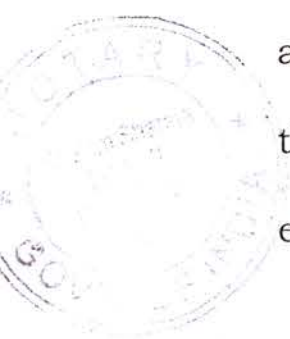
(i) Netaji did not die in the plane crash; and



A handwritten signature in black ink, appearing to be "G. K. Singh".

(ii) The ashes in the Renkoji Temple were not of Netaji."The Report was placed before both the Houses of Parliament on 17th May, 2006 as required under Sub-Section 4 of Section 3 of the Commission of Inquiry Act, 1952.

(l) It would be seen that the Government has accepted the majority reports of the Committees/ Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. The Commission of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds mentioned for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the



Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from any illegality or arbitrariness.

7. With regard to the statements made in paragraph 1 to 6 of the said petition needs no comments, as the same are the matter of record.

8. With regard to the statements made in para 7(i) & (ii) of the Supplementary Affidavit it is submitted that the Government of India is not spending money from public exchequer for maintenance of Renkoji Temple in Tokyo, Japan.

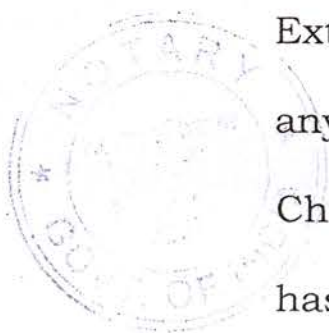
9. With regard to statement made in Para 7 (iii) of the Supplementary Affidavit, it is submitted that the concerned organization viz. Netaji Research Bureau is a Registered Society formally registered under the Act XXI of 1860. It is an autonomous body, housed in its own premises, the ancestral home of Netaji. The Netaji Research Bureau an institute of History, Politics and



International relations. A fifteen member council drawn from various walks of lives all over India carries on the management of the Bureau and was established in 1957. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. In view of the prestigious history of Bureau for decades, the Bureau has conveyed that that statements made in Para 7 (iii) of Supplementary Affidavit is rejected outright.

10. With regard to statement made in Para 7 (iv) of Supplementary Affidavit it is submitted that in view of what has mentioned in para 5 above, the question of bringing back the ashes kept in Renkoji Temple, Tokyo does not arise.

11. With regard to the Statement made in Paras 8 & 9 of the Writ Petition, it has been conveyed by Ministry of External affairs that Union of India has not approved any proposal for bringing the ashes of Netaji Subhash Chandra Bose back to India. Ministry of External Affairs has further conveyed that they are not in knowledge of



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any such proposal which has been presented to Indian Embassy in Tokyo and Ministry of External Affairs has also commented that that news items referred to in Para 8 & 9 of the Supplementary Affidavit are speculative.

12. With regard to statement made in Para 10 & 12 of Supplementary Affidavit needs no comments.

13. The statements made in the above mentioned paragraphs are true to my information derived from record.

Prepared in my office

The deponent is known to me

Advocate

Clerk to

Advocate

Solemnly affirmed before me

on thisday of March, 2013.

24 JUL 2013

Commissioner.



ATTESTED

NOTARY PUBLIC
DELHI (INDIA)

NEELAM SHARMA
ADVOCATE
SUPREME COURT OF INDIA
165-A, Gate No. 6,
Patela House Condo, New Delhi
(MO) 9380462761, 9350477237

24 JUL 2013

541

507

District: Howrah
In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
W.P.No. 27541 (W) of 2006

In the matter of:
An application under Article 226
of the Constitution of India;

And

In the matter of:
Sri Ashim Kumar Ganguly &
Another

... .. Petitioners

-Versus-

Union of India & Others.

... .. Respondents

Affidavit-in-opposition on behalf
of the respondents Nos. 1 to 4 in
5 to the writ petition the above
matter and Supplementary
affidavit thereto.

Asish Kumar Roy, Advocate
Bar Association Room No.
High Court, Calcutta



542

504

**Supply WP No.27541/2006(W)-Ashim Kumar Ganguly Vs
UOI**

From: **ashish gawai** (ashishgawai@hotmail.com)

Sent: 30 July 2013 16:59PM

To: somnath_advo@yahoo.co.in (somnath_advo@yahoo.co.in); sssarker@rediffmail.com
(sssarker@rediffmail.com); av.gawai@nic.in (av.gawai@nic.in)

1 attachment

WP No.27541(W)2006 Ashim Kumar Ganguly.PDF (172.9 KB)

Dear Sh.Sarker and Sh.Bose,

As discussed on phone,pl find scanned copies of the affidavit duly signed and notarised sent to Sh.S S
Sarker for your kind perusal and further necessary action.

Thanks and regards

ASHISH V GAWAI

MOB:09818122971

Mail:ashishgawai@hotmail.com

543

**Supply WP No.27541/2006(W)-Ashim Kumar Ganguly Vs
UOI**

305

From: **ashish gawai** (ashishgawai@hotmail.com)

Sent: 30 July 2013 17:04PM

To: somenath_advo@yahoo.co.in (somenath_advo@yahoo.co.in)

1 attachment

WP No.27541(W)2006 Ashim Kumar Ganguly.PDF (172.9 KB)

Dear Sh.Bose,

Pl find the doc as spoken about the matter.

ASHISH V GAWAI

MOB:09818122971

Mail:ashishgawai@hotmail.com

From: ashishgawai@hotmail.com

To: somnath_advo@yahoo.co.in; sssarker@rediffmail.com; av.gawai@nic.in

Subject: Supply WP No.27541/2006(W)-Ashim Kumar Ganguly Vs UOI

Date: Tue, 30 Jul 2013 16:59:06 +0530

Dear Sh.Sarker and Sh.Bose,

As discussed on phone, pl find scanned copies of the affidavit duly signed and notarised sent to Sh.S Sarker for your kind perusal and further necessary action.

Thanks and regards

ASHISH V GAWAI

MOB:09818122971

Mail:ashishgawai@hotmail.com

Ashish Kumar Roy

ADVOCATE

HIGH COURT, CALCUTTA

BAR ASSOCIATION, ROOM NO. 11

Ph. : 2248-3190/3169, 2243-7363

Fax : (033) 2248-2313

KIND ATTENTION OF **ASHISH V. GAWAL**

Under Secretary (NSA) Residence:

156, PURBA SINTHEE ROAD,

BAUL BAKERY, DUM DUM,

KOLKATA - 700 030 PH. : 2548-0423.

MOB. 9433185449, 9903448521

Date 02.08.13

To

The Addl. Port. Advocate
M.O.L. & Justice
11, Strand Road
Kolkata - 700001

Re: F/L NO. 1204/ Home/2006-III

D.P. NO. 27541 (W) of 2006

Ashim Kumar Ganguly

vs

U.O. 9. 8008

Sir,

This is to inform you that in the aforesaid matter an affidavit in substantiation was affirmed by Mr. Ashish V. Gawal, The Under Secretary, Ministry of Home Affairs, 15-11 Division, NDCC-II Building, New Delhi - 110001 which was received by me through M.O.L. Kolkata.

It appears from the said affidavit that last page of the affidavit is blank, no signature is there as such this affidavit has not executed properly. and the matter is fixed for hearing on 05/08/13 which you please note and act accordingly.

Thanking you

Yours faithfully

Ashish Kumar Roy
Advocate

Sent by fax to (name)
Purnima
Suptd. 2/8/13

5/8
In cdn

Abish Kumar Roy

ADVOCATE

HIGH COURT, CALCUTTA

MINISTERIAL

KIND ATTENTION M. ASHISH V. GAWAI

Linda Sawetany (NSP) Residence:

158, PURBA SINTHEE ROAD,

BAUL BAKERY, DUM DUM,

KOLKATA - 700 030 PH. : 2548-0423,



Date 02.08.13

To

The Addl. Govt. Advocate

MINISTERIAL

No. 112/110-1207/11000/2010-111

IN THE

U.O. 9. 8008

Sir,

This is to inform you that the proposition was approved by Mr. Ashish V. Gawai in the Ministerial not executed properly and the matter is not yet decided on 05/08/13 when you please note and act accordingly.

Yours faithfully
Abish Kumar Roy
Advocate

Sent by fax
penn,
2/6/13

APRIL - 2013 ALPHA

SHIPPER'S COPY	S	Customer Code		CONSIGNEE	Consignee Code		NON NEGOTIABLE-AT OWNER'S RISK	 BLUE DART EXPRESS LIMITED																											
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SUB PRODUCT CODE	SUB PRODUCT CODE																																		

547

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Speed Post
Court Case
Most Immediate

No.12014/12/2007-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

2nd Floor, NDCC-II Building,
Jai Singh Road, New Delhi.
New Delhi Dated 5th August, 2013.

Shri S.S. Sarker,
Senior Central Govt. Advocate,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
11, Strand Road, Kolkatta- 700 001.

Sub: Supplementary Writ Petition No. 27541(W) of 2006 Shri
Ashim Kumar Ganguly and Anr. Vs UOI and Ors.

Sir,

Aprose telephonic conversation I am sending signed
and notarised Couer Affidavit typed on green demi paper along
with three copies. Kindly have the same filed and intimate the
status of the matter.

Yours faithfully,

(Ashish V. Gawai)
Under Secretary(NSA)
av. gawai@nic.in
Tel No.23438083

548
510
District: Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.No. 27541 (W) of 2006

In the matter of:

An application under Article 226
of the Constitution of India;

And

In the matter of:

Sri Ashim Kumar Ganguly &
Another

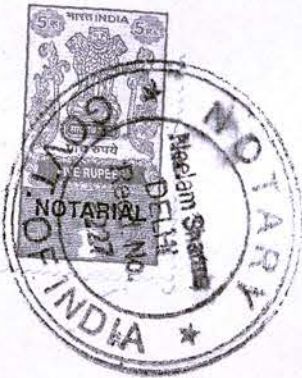
... .. Petitioners

-Versus-

Union of India & Others.

... .. Respondents

Affidavit-in-opposition on behalf of the respondents
Nos. 1 to 4 in 5 to the writ petition the above matter and
Supplementary affidavit thereto.



[Handwritten signature]

549
511
163897/DS(2)/13
11/9/2013

Urgent High Court Matter

F. No.1204/Home/2006-III/2953/754
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
11, STRAND ROAD
KOLKATA

DATE: 29.08.2013

Fax No.22311646
Tel. No.22484806

To,
Shri N.K. Job,
Deputy Secretary(Legal)
Ministry of Home Affairs
2nd Floor, NDCC-II Building,
Jaisingh Road, New Delhi-110001.

Sub: W.P. No. 27541(w) of 2006
Shri Ashim Kr Ganguly
-vs-
Union of India & Ors.

US(USA) may please see to date
16/9/13
US(USA)
Sir,

Please find enclosed herewith a copy of the letter dated 27.08.2013 received from the panel counsel Shri Asish Kr Roy, Advocate(Mob: 9433185449,9903448521) which is self explanatory and further necessary action at your end.

Yours faithfully,

(J.SRINIVASARAO)
Superintendent (legal)

Encl: AS above
Copy to :-

Shri. Asish Kr Roy, Advocate(Mob: 9433185449,9903448521)
High Court at Calcutta
Bar Association, Room No.11.....for information PL.

Superintendent (legal)

Are we concerned, please?

12/9/13

For you please

US(USA)

13/9/13

SO(Legal)

Talked to the Advocate. He informed that the matter relates to Mukherjee Commission. Hence, not for legal cell-I. May be for 'Cdu' Section of this Division.

US(L)

ASISH KUMAR ROY

Advocate

High Court, Calcutta,
Bar Association Room No.11,
Phone No.2248-31903169,
Fax : (033) 2248-2313



Residence

156, Purba Sinthee Road, Baul
Bakery, Dum Dum,
Kolkata-700030
Phone No.9433185449, 9903448521

Date: 27.08.13

To
Concerned Officer/Advocate-On-Record of
Ministry of Law & Justice,
Branch Sectt. Kolkata.

RECORD OF PROCEEDINGS

- (i) Branch Secretariat File No. 1204/Home/2006-111
- (ii) Case Number & Cause Title N.P.No. 27541 (A) of 2006
Shri Ashim K. Ganguly
vs
u.o. 9. 8008
- (iii) Date of hearing 19.08.13
- (iv) Court No. 12
- (v) Item No. 7 (original side dist)
- (vi) Name of Judges Justice Banerjee & Justice
Mrinal Kanti Choudhury
- (vii) Name of Law Officer/Counsel Appeared Ashish Kumar Roy
- (viii) Order/Direction of the Court Matter was heard at
length. I appeared on behalf of u.o. 9. 8008
led by Mr. Somnath Bose and Mr. R.N. Das, Sr.
Advocate. Matter will appear on 21.08.13
for further hearing along with other two
other matters, one in original and one in
Appellate Side matter.
- (ix) Remark

Signature
27/08/13

Name Ashish Kumar Roy

Signature *AKRM*

In case of Appellate Side matter one copy to be sent directly to concerned
Department/Ministry.

*2. P.A. (u)
pl. sent to
to Dept
27/8/2013*

ASISH KUMAR ROY

Advocate

High Court, Calcutta,
Bar Association Room No.11,
Phone No.2248-31903169,
Fax : (033) 2248-2313

7 AUG 2013

Residence

156, Purba Sinthee Road, Baul
Bakery, Dum Dum,
Kolkata-700030
Phone No.9433185449, 9903448521

Date: 27.08.13

To
Concerned Officer/Advocate-On-Record of
Ministry of Law & Justice,
Branch Sectt. Kolkata.

RECORD OF PROCEEDINGS

- (i) Branch Secretariat File No. 1204/Home/2006-III
1219/Home/2013-III
- (ii) Case Number & Cause Title N.P.No. 27541(N) of 2006
Shri Ashish Kumar Benguly
48
U.O. 9.8.08
- (iii) Date of hearing 21.08.13
- (iv) Court No. 12
- (v) Item No. 5 (original side)
- (vi) Name of Judges Hon'ble Justice Banerjee
Justice Mridul Kanti
chowdhury
- (vii) Name of Law Officer/Counsel Appeared Ashish Kumar Roy
(Sr. 60-II)
- (viii) Order/Direction of the Court Matter was heard-in-part
I have opposed the applications
led by Mr. R.N. Das, Somnath Basu.
Matter will appear on 22.08.13
for further hearing.
- (ix) Remark Matter is appearing in the original
side dist as item no 5 along with
N.P.No. 8215 (N) of

Name Ashish Kumar Roy

Signature, ARM

In case of Appellate Side matter one copy to be sent directly to concerned
Department/Ministry.

2 P.P. (N) of
Pl. Summ. - 2006 P.M.
Dept
1-10/02/13

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554

ANNEXURE-P-23

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

Calcutta High Court

Calcutta High Court

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

Author: Banerjee

Form No. J.(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

Present :

The Hon'ble Mr. Justice Ashim Kumar Banerjee And

The Hon'ble Justice Dr. Mrinal Kanti Chaudhuri W.P. No. 2003 of 2006

SHRI RUDRA JYOTI BHATTACHARJEE & ORS.

VS.

UNION OF INDIA

ALONG WITH

W.P. No. 27541 (W) of 2006

ASHIM KR. GANGULY & ANR.

VS.

UNION OF INDIA

AND

W.P. No. 8215 (W) of 2008

SUBHAS CHANDRA BOSE

VS.

UNION OF INDIA & ANR.

For the Appellants : Mr. Keshav Bhattacharjee, Advocate (in WP 2003/06) Mr. Jagabandhu Ray, Advocate
Ms. Debjani Ghosal, Advocate

For the Appellants : Mr. Ashim Kumar Ganguly, (In person) (in WP 27541 (W)/06)

For the Appellants : Mr. Subhas Chandra Bose, (In person) (in WP 8215 (W)/08)

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

For added respondents : Mr. Rudrajyoti Bhattacharjee, Advocate (in WP 27541 (W)/06) Ms. Debjani Ghosal, Advocate For Union of India : Mr. R.N. Das, Senior Advocate Mr. Somenath Bose, Advocate

Mr. Md. Nizammudin, Advocate

Mr. Ashis Kr. Roy, Advocate

Heard on : August 19, 21, 22, 29 and September 3, 2013.

Judgment on : September 19, 2013. ASHIM KUMAR BANERJEE, J.

PREFACE :

Indian freedom struggle passed through violent and non-violent movement from time to time. We do not wish to enter into a debate, who should be given the credit for our freedom, the non-violent movement under the leadership of the father of the nation or the violent one. If people would like to give credit to the non-violent movement they would have sound logic behind it. Yet, no one could ignore the relentless fight of the youths of India to put the British administration in difficulty many a times through violent movement, rather it was a fall out of continuous oppression and torture that the British administration inflicted on our predecessor. Netaji Subhas Chandra Bose was one of the pioneers of our non-violent movement and ardent follower of the father of the nation. However, in 1939 he left the Congress and organized the Indian youth to fight out the British administration. The Second World War helped him in this regard when he joined the opposing force of British with his disciplined force commonly known as 'INA'. He left the country and went underground and fought the British from outside. We ultimately got freedom in 1947. Sixty-six years have passed thereafter. We feel ashamed, we do not know his whereabouts. By the long passage of time, any prudent man would agree, he is no more in this world. How did he die? What did he do since we last heard him on the Radio? Being the citizen of the world's largest democracy, each one of us has a birth right to ask the Government to let us know about him and how he died. Three Commissions could not answer the query, was the Government sincere? or despite their best efforts and sincerity they could not find out the cause. With this mindset, we proceed to dispose of the present litigation pertaining to our great Hero.

BACKDROP :

After the India became independent the democratic Government of the country appointed a Commission called 'Shah Nawaz Committee' in April 1956 to find out the whereabouts of Netaji. The 'Shah Nawaz Committee' could not effectively answer the reference. The Government again appointed 'Khosla Commission of enquiry' in 1970 to enquire into and report to the Government on the circumstances concerning the departure of Netaji from Bangkok on or about August 18, 1945 and reported death in the plane crash and the subsequent development thereto. The second Commission also failed to answer the reference. The Government did not proceed any further. This caused annoyance to the members of public. On January 22, 1992 the President of India decided to award Bharat Ratna to Netaji posthumously that created a tremendous discontent amongst the members of the public as the Government took Netaji to be dead. Sri Bijon Ghosh, an advocate of this Court filed a Public Interest Litigation that ultimately reached the Apex Court. The Apex Court however recorded the concession of the Central Government who ultimately dropped the idea of giving the posthumous award to Netaji. The Apex Court recorded, "since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled". The Government had to backtrack and withdraw the notification. Subsequently, another Advocate of this Court Mr. Rudrajyoti Bhattacharjee along with another, filed Public Interest Litigation being WP No. 281 of 1998 inter alia praying for various directions on the alleged research being conducted by Netaji Research Bureau and for classification and disclosure of all documents relating to Netaji as also his nexus in the Second World War. The Division Bench of our Court disposed of the writ petition by directing the respondent administration to launch a vigorous enquiry in accordance with law by appointing a

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

Commission of Enquiry to find out whether he was dead or alive, and in case, he was dead, the cause of death as also to find out, whether the ashes that was kept at Renkoji Temple at Japan would belong to Netaji or not. The administration accepted the said order and appointed one- man enquiry Commission under the aegis of Monoj Kumar Mukherjee, a former Judge of the Apex Court to answer the following questions:

(a) Whether Netaji Subhas Chandra Bose is dead or alive; (b) If he is dead, whether he died in the plane crash, as alleged; (c) Whether the ashes in the Japanese Temple are ashes of Netaji;

(d) Whether he has died in any other manner at any other place and, if so, when & how;

(e) If he is alive, in respect of his whereabouts. The Commission submitted its report on November 8, 2005. The detailed report in three volumes answered as follows : (a) Netaji Subhas Chandra Bose is dead;

(b) He did not die in the plane crash, as alleged; (c) The ashes in the Japanese Temple are not of Netaji; (d) In absence of any clinching evidence a positive answer cannot be given; and

(f) Answer already given in (a) above.

On May 16, 2006 the Ministry of Home Affairs, Government of India tabled the Action Taken Report on the report of the Commission, before the Parliament. The Action Taken Report would provide as follows :

"The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that -

(a) Netaji did not die in the plane crash; and (b) The ashes in the Renkoji Temple were not of Netaji." The matter would rest at that stage. The cause is still left unfound. The present three applications, which we heard, were the fall out in desperation.

PRESENT LIS :

WP 2003 of 2006

Mr. Rudrajyoti Bhattacharjee, an Advocate of this Court filed application in the nature of Public Interest Litigation inter alia praying for the following reliefs :

"a) A Writ of and/or order or direction in the nature of mandamus commanding the respondents, its agents and subordinates to act in accordance to law and to rescind, recall and cancel the impugned Action Taken Report being Annexure "P/14" forthwith.

b) To command the respondents to implement in particular the crucial and all-important findings reached by the Commission after an elaborate, indepth inquiry and/or probe by giving public hearing to all concerns that Netaji did not die on the 18th August 1945 as alleged and also the categorical findings that the alleged ashes of Netaji kept in the Renkoji Temple are not ashes of Netaji Subhas Chandra Bose should be implemented and acted upon.

c) For a further declaration that all connected official records, papers books published by the Government, its agent or any other publications should be corrected strictly and scrupulously in terms of the Inquiry Commissions report;

d) A writ of and/or order or directions in the nature of Certiorari requiring respondents to certify, transmit and produce all records relating to the enquiry into the disappearance of Netaji Subhas Chandra Bose; and to show cause as to why the order complained of should not be set aside and upon hearing the parties and perusing the

records be pleased to quash the impugned Action Taken Report being Annexure "P/14". e) A writ of and/or order or direction in the nature of Prohibition restraining the respondents, its subordinates and agents from giving any effect or further effect to the impugned Action Taken Report being Annexure-"P/14".

f) A writ of and/or order or direction in the nature of Prohibition restraining the respondents, its subordinate and agents from allowing any person or persons to bring ashes, kept in the Renkoji Temple."

The Union of India filed affidavit-in-opposition through one Swapan Kumar Goswami, Under Secretary to the Ministry of Home Affairs affirmed on October 25, 2007 inter alia contending, the Government of India thoroughly examined the report of Mukherjee Commission and took the decision not to accept the findings as they were not based on firm grounds. The deponent also asserted, the Union of India acted in terms of the Commissions of Enquiry Act, 1952. He prayed for dismissal of the writ petition. In short, the Government did not offer any further enquiry to be made in this regard. The parties subsequently filed supplementary affidavits, last one was filed in September, 2010. In the supplementary affidavit the petitioner No. 2 Surojit Dasgupta contended, "the Parliament has no business to take decisions on Action Taken Report". In effect, the petitioners challenged the Action Taken Report. The Deputy Director, Rajya Sabha Secretariat vide office Memorandum dated August 21, 2008 informed, "since there was no Motion before the House to accept or reject the said ATR, the Secretariat has no comment to offer in the matter".

WP 27541 (W) OF 2006 :

Two other Advocates filed this Public Interest Litigation inter alia objecting to the money spent from the public exchequer for maintaining Renkoji Temple and the ashes preserved there, stated to be of Netaji, even after the Mukherjee Commission held, it would not belong to Netaji. The Central Government also filed affidavit in this matter. They also relied upon Action Taken Report and informed, "the Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo". With regard to the other allegation of spending from public exchequer for research on Netaji, the deponent contended, "Netaji Research Bureau is an internationally known Institute of History, Politics and International Relations established in 1957. Netaji Research Bureau is celebrating its Golden Jubilee anniversary in the year 2007-2008. The Founder Director of Netaji Research Bureau Dr. Sisir Kumar Bose had collected materials on the life of his uncle Netaji Subhas Chandra Bose from all over the world for many decades. Apart from a very rich archives the Bureau has a museum and preserved rooms of Netaji which are visited by hundreds of people throughout the year. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has also produced documentaries and audio cassettes on him. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. It is run by a body of distinguished persons".

The deponent prayed for dismissal of the application. WP 8215 (W) OF 2008 :

The petitioner No. 2 in the second application filed this Public Interest Litigation with another Advocate of this Court inter alia praying for re-appointment or re-opening the Mukherjee Commission to have concrete answer in respect of Item No. (d) and (e) which remain unanswered. The Central Government also filed affidavit through Under Secretary, Ministry of Home Affairs inter alia contending, this issue was barred by the provision of Article 122 of the Constitution being in complete domain of the Parliament. This affidavit also relied upon Action Taken Report and its acceptance by both Houses of the Parliament. The affidavit would also suggest, the Commission worked for six and half years and the Government had to spend huge sum of money from the public exchequer on this count. Commenting on the report the deponent stated, "Justice Mukherjee Commission's Report, therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Enquiry". ARGUMENTS :

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Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

Mr. Ashim Kumar Ganguly, learned advocate argued in support of his petition being the second one. He would contend, once the Mukherjee Commission categorically answered, Netaji did not die in the plane crash, there was no reason why the public exchequer would be spent on the maintenance of Renkoji Temple and the ashes stated to be of Netaji.

Mr. Subhas Chandra Bose, learned advocate arguing in support of the third petition would contend, the report of Mukherjee Commission was inconclusive, hence, it was incumbent upon the Central Government to re-appoint or re-open the issue appointing another Commission by the same person or anyone else to find out definite answer on the issues left by the earlier Commission. Mr. Rudrajyoti Bhattacharjee, learned advocate representing the other petitioners being the added respondents in the third petition would support the petitioner's contentions.

Mr. Keshav Bhattacharjee, learned advocate argued in the first matter. He took immense pain to draw our attention to report of the Commission, its finding recorded therein and contended, even after the alleged plane crash Netaji was alive and the independent Government of the country was aware of the same. In this regard, he would refer to the documents collected by Mukherjee Commission and annexed to its report. In fact, Taiwan Government in their E-mail admitted, "we may not sure whether U.S. still hold the passenger lists of that crashed plane by the very limited information, but this is the most closest information we could gather after the most effort we did in this regard". In the said E-mail they admitted, there was no evidence to show that one plane had crashed carrying Netaji. He would also refer to pages 255-262 where the Chairman of the Mukherjee Commission submitted report on his visit to Taipai and Bangkok to show, he was not convinced with the alleged plane crash incident. He would also refer to the letter of the then Prime Minister of India appearing at page-33 of the petition that would quote a statement of Shyamlal Jain, Stenographer working for Jawharlal Nehru addressed to one Mr. Atlee,

"Dear Mr. Atlee,

I understand from most reliable source that Subhas Chandra Bose your War Criminal has been allowed by Stalin to enter into the Russian territory, which act of his is clear treachery and betrayal of faith, as Russia was an ally of the British and the America, Stalin should not have done so. This is just for your information and notice." This was recorded by Khosla Commission. He also contended, the Government of India was aware, there was no alleged plane crash on August 18, 1945 involving Netaji's death. The Taiwan Government carried out a detailed investigation and submitted a report to the Government to United Kingdom on May 23, 1956 that report was inspected by Mukherjee Commission which would show, there was no air crash involving Netaji. He would refer to the Radio Message of Netaji appearing at page 114A-B. Netaji's voice was broadcast on December 26, 1945, January 1, 1946 and February 1946. Commenting on the Action Taken Report, Mr. Bhattacharjee would contend, how the Home Minister himself could sign the report as would be appearing at the top of it at page-127 of the compilation. He prayed for suitable orders re-opening the entire issue so that the people of the country would know, what had actually happened to Netaji.

Per contra, Mr. R.N. Das, learned senior advocate appearing for the Union of India in all the three matters would refer to various provisions of the Commission of Enquiry Act and contend, once the report was placed in both Houses of the Parliament and the Action Taken Report was accepted, the Court would have hardly anything to do in the matter. He would contend, Action Taken Report once accepted by the Parliament, was no more available for judicial scrutiny. He would refer to the documents pertaining to tabling of the Action Taken Report before the Parliament. He would lastly contend, the Commission appointed under the said Act of 1952 was recommendatory in nature. It was nothing but a fact finding body without any power of adjudication or granting of relief. Mr. Somenath Bose, learned advocate also appearing for the Union of India would add, once the Parliament accepted the report and did not find anything wrong the Court would have hardly anything to do. The proceeding of the Parliament was protected from judicial scrutiny under Article 122 of the Constitution. On the Netaji Research Bureau, Mr. Basu would contend, Bureau was doing research job not only on this subject but also on other subjects too. Hence, it would not be proper to shut the

organization or stop funding the same. Commenting on the evidence of Shyamlal Jain, he would say, it had no evidentiary value in view of the provisions of Section 18 of the Evidence Act.

While replying, Mr. Subhas Chandra Bose would contend, Commission's power was not challenged in the writ petition. It was the Action Taken Report of the Government that would definitely come under the judicial scrutiny. In any event, the Action Taken Report being cryptic and devoid of reason, would certainly warrant interference. Joining him, Mr. Ashim Kumar Ganguly would contend, Netaji Research Bureau did not file any affidavit counter acting the allegations made against them.

Mr. Keshav Bhattacharjee, learned advocate while replying, dealt with the cases cited by Mr. Das. He would also contend, the Action Taken Report was challenged and not the Parliament proceeding, hence, Article 122 would have no application. He would sum up his argument, once the Action Taken Report did not disclose any reason subsequent affidavit supplementing reason would not cure the defect. The official stand of the Government was not known to the members of the public that must come up.

CASAES CITED :

1. All India Reporter 1999 Calcutta page-9 (Rudra Jyoti Bhattacharjee & Ors. Vs. Union of India & Ors.);
2. All India Reporter 1997 Supreme Court page-3019 (Union of India Vs. Bijan Ghosh & Ors.);
3. All India Reporter 1977 Volume-IV Supreme Court Cases page-608 (State of Karnataka Vs. Union of India & Anr.);
4. 2004 Volume-V Supreme Court Cases page-568 (State of Orissa Vs. Dhaniram Luhar);
5. All India Reporter 1978 Supreme Court page-851 (Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi);
6. 70 Calcutta Weekly Notes page-399 (Sahu Jain Ltd. Vs. Deputy Secretary & Ors.);
7. All India Reporter 1967 Supreme Court page-295 (Barium Chemicals Ltd. and Anr. Vs. Company Law Board and Ors.). The case of Barium Chemicals (supra) was relied upon on the sufficiency of reason. The case of State of Orissa (supra) was relied upon as to the scope of Court's interference on a cryptic order being devoid of reason. The decision in the case of Mohinder Singh Gill (supra) and Sahu Jain (supra) were cited on the issue as to how the definite assertion made in the case could be dealt with in the affidavit-in-opposition.

The above are well settled principles of law that would still hold the field. We need not deliberate further on the same. OUR VIEW :

We would be concerned with the appropriate provisions of the said Act of 1952 to Mr. R.N. Das find out our competence to deal with the issue. Section 3 would empower the Union of India or the State to appoint Commission of Enquiry for the purpose of making an enquiry into any definite matter of public importance and performing such functions and submit report before the Parliament or the Assembly as the case may be. As soon as the report would be submitted to the Government, the Government would lay the same before the Parliament and/or the Assembly as the case may be, together with the Action Taken Report on the same. The Mukherjee Commission was appointed under Section 3 of the said Act of 1952. The Mukherjee Commission submitted its report before the Government. Government placed the Action Taken Report before both Houses of Parliament. They accepted the same. Article 122 would prevent us from questioning the same through a judicial scrutiny. Hence, we are unhesitatingly of the opinion, the Mukherjee Commission report or the Action Taken Report on the same is not available to us for any judicial scrutiny. We are constrained to hold, the challenge to the Action Taken Report is not maintainable. It is unfortunate, even after sixty-six years of

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independence we would not know how our leader being universally acclaimed, spent his last days. We would not know, how did he die. We would not know, where was he after he was last seen in early 1940s. Our Division Bench, in the earlier proceeding in the case of Rudra Jyoti Bhattacharjee (supra), categorically asked the Government to conduct a vigorous enquiry that the Central Government complied. We have nothing further to do on that score. In the case of State of Karnataka (supra) the State filed a suit in the Supreme Court for a declaration that the appointment of Commission by the Central Government was illegal and ultra vires on the ground, the said Act of 1952 did not authorize the Central Government to constitute such Commission. The Seven-Judge Bench, per majority, held, the suit maintainable and thereafter observed, the Central Government was quite competent under the said Act of 1952 to appoint such Commission and the suit was liable to be dismissed.

On the issue of expenditure on Renkoji Temple, we are of the view, once the Central Government by affidavit made it clear, they no more funded the maintenance of the said Temple of the ashes, no interference on this score is required. On the Netaji Research Bureau, it is common knowledge of all concerned, the Bureau is working on the Research. Without any plausible reason being shown, there could not be any direction for stoppage of the grant. While we hold, the petitioners in all the three petitions would not be entitled to any relief as claimed, we would still observe and express our hope and trust, the Central Government, in their wisdom, would certainly keep it in mind and would explore the possibility, if possible, to find out the answer on the issue which is a long cherished desire of the people of the country. In short, it is our earnest endeavour to observe, the issue must not be closed forever. The writ petitions are accordingly disposed of without any order as to costs.

Dr. Mrinal Kanti Chaudhuri, J:

I agree.

[ASHIM KUMAR BANERJEE, J.]

[DR. MRINAL KANTI CHAUDHURI, J.]